

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

OCEAN TOMO, LLC,)	Docket No. 12 C 8450
)	
Plaintiff/)	Chicago, Illinois
Counterdefendant,)	June 26, 2017
)	2:03 p.m.
v.)	
)	
JONATHAN BARNEY and)	
PATENTRATINGS, LLC,)	
)	
Defendants/)	
Counterplaintiffs.)	

VOLUME 1-B
TRANSCRIPT OF PROCEEDINGS - Bench Trial
BEFORE THE HONORABLE THOMAS M. DURKIN

APPEARANCES:

For the Plaintiff/ Counterdefendant:	SPENCEPC by MR. WILLIAM C. SPENCE MR. BRIAN J. BECK 405 N. Wabash Avenue, Suite P2E Chicago, IL 60611
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For the Defendants/ Counterplaintiffs:	JENNER & BLOCK LLP by MR. DAVID C. LAYDEN MS. KATHARINE R. CILIBERTI 353 N. Clark Street Chicago, IL 60654-3456
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Court Reporters:	KATHLEEN M. FENNELL, CSR, RMR, FCRR SANDRA M. MULLIN, CSR, RMR, FCRR Official Court Reporters 219 S. Dearborn Street, Room 1432 Chicago, IL 60604 312.435.6053 laura_renke@ilnd.uscourts.gov
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1 (Proceedings heard in open court:)

2 THE COURT: All right. Ready to proceed?

3 MR. LAYDEN: Your Honor, just one initial matter
4 before we do that -- sorry to interrupt, Cory. We considered
02:03:34 5 what you said about the exclusion of Mr. Lutzker, and we would
6 like to have him excluded for the witness testimony. I didn't
7 have a problem having him during the opening, but given that
8 he will be a witness in the case and these are going to touch
9 on the areas that he will be asked about.

02:03:44 10 THE COURT: Any objection?

11 MR. SPENCE: Well, I guess our concern is that
12 Mr. Barney has practically been counsel in this case as well.
13 He's been at every deposition. He's been at hearings. He's
14 argued things. He knows the facts as well as anybody.

02:03:54 15 THE COURT: He's a party.

16 MR. SPENCE: Mr. Lutzker has done the same thing.

17 THE COURT: Well, Ocean Tomo sued Barney. Mr. Barney
18 sued Ocean Tomo. There's no individual defendants otherwise,
19 right?

02:04:02 20 MR. LAYDEN: That's correct.

21 MR. SPENCE: But he is counsel of record in this
22 case. They've never raised this as an issue until now.

23 THE COURT: Well, who's the first witness?

24 MR. SPENCE: Ms. Johnson.

02:04:11 25 THE COURT: And is Ms. Johnson going to testify about

1 something that Mr. Lutzker is involved with?

2 MR. SPENCE: No. I mean, she's going -- she's in the
3 Expert Services Group. She's going to testify about her work
4 in Expert Services.

02:04:27 5 THE COURT: What's Mr. Lutzker going to testify
6 about?

7 MR. SPENCE: We don't have him as a witness. They
8 called him as a witness.

9 THE COURT: Oh. Why are you calling him?

02:04:36 10 MR. LAYDEN: Your Honor, we're going to call him
11 about a lot of issues related to the royalties, as well as
12 other issues just relating to the background. Mr. Lutzker's
13 been very involved in a lot of the events and acts relating to
14 this case.

02:04:45 15 THE COURT: Yeah, but I didn't realize you're calling
16 him, not him. I'm going to deny the motion to exclude.

17 Okay. Call your first witness.

18 MR. LAYDEN: Thank you, your Honor.

02:05:01 19 MR. SPENCE: Ocean Tomo calls Joanne Johnson to the
20 stand.

21 THE CLERK: If you could step up to the witness stand
22 over here, please.

23 (Witness sworn.)

24 THE CLERK: You may be seated.

02:05:19 25 THE COURT: All right. You may begin.

1 JOANNE JOHNSON, PLAINTIFF'S WITNESS, DULY SWORN,
2 DIRECT EXAMINATION

3 BY MR. SPENCE:

4 Q. Good morning, Ms. Johnson, how are you?

02:05:22

5 A. Good.

6 Q. Could you please state your full name for the record.

7 A. Sure. Joanne Johnson.

8 Q. Ms. Johnson, could you explain to the judge where you
9 work.

02:05:29

10 A. I work at Ocean Tomo. I'm a director in the Financial
11 Expert Testimony Practice Group.

12 Q. What type of work do you do?

13 A. I'm in the ET, Expert Testimony Practice Group, and we're
14 focused on quantifying damages in a litigation context.

02:05:45

15 Q. What do you mean? Quantifying damages in a litigation
16 context, what does that mean?

17 A. So typically, it amounts to coming up with what we think
18 is the proper amount of damages, typically in lost profits or
19 reasonable royalty that should be due based on the specific
20 facts of the case.

02:06:02

21 Q. And let me just back up for a second because I do notice
22 that you're pregnant and I didn't notice that before we
23 started today. So to the extent you do need a break or need
24 some water, please do let me know.

02:06:14

25 A. Sure.

1 Q. Let me talk to you about your positions prior to working
2 at Ocean Tomo. What did you do at that time?

3 A. Prior to working?

4 Q. What was your last job before Ocean Tomo?

02:06:21

5 A. So I've been with Ocean Tomo since undergrad. I interned
6 with the firm in 2007 and then joined full-time in 2008. I
7 started as an analyst, moved up to an associate and am now a
8 director.

9 Q. Where did you go to undergrad?

02:06:34

10 A. I went to the University of Illinois, where I graduated
11 with a dual degree in accounting and finance.

12 Q. And other than the dual degrees in accounting and finance,
13 do you have any other certifications that relate to your work
14 at Ocean Tomo?

02:06:47

15 A. Yes. I'm also a registered CPA in the state of Illinois.

16 Q. Now, in addition to the role you played with Ocean Tomo
17 with the Expert Services Group, do you have any other role
18 within Ocean Tomo?

02:07:01

19 A. Yes, I do. I have some administrative responsibilities,
20 as well as some management responsibilities. My admin tasks
21 could include putting together and sending out invoices to
22 clients, as well as taking a large role in training new hires
23 that come to the firm.

02:07:19

24 And in regards to management responsibilities, I
25 manage junior staff I work with. I also put together

1 presentations about the business that I provide to the entire
2 firm.

3 Q. Anything else?

4 A. I think that's primarily it.

02:07:32

5 Q. Now, you mentioned that you started with Ocean Tomo right
6 out of college. How many years ago was that?

7 A. Close to nine now.

8 Q. Okay. So you've been with Ocean Tomo for nine years?

9 A. Nine years, yes.

02:07:42

10 Q. Based on your work with Ocean Tomo for the last
11 nine years, can you explain for the Court what Ocean Tomo
12 does.

13 A. Sure. We're a financial consulting service firm that is
14 focused on various types of intellectual property.

02:07:55

15 Q. You mentioned various types of intellectual property. Is
16 there a specific type of IP, or is it more general?

17 A. Well, we really do have expertise in all types of
18 different IP. That would be trade secrets, trademarks,
19 copyrights and many more, but really our primary focus tends
20 to be on patents.

02:08:11

21 Q. Okay. I believe that you said that Ocean Tomo provides
22 consulting services. What types of consulting services does
23 it provide?

24 A. So our verticals, the name of our verticals may have
25 changed over time. Currently we have three verticals. It's

02:08:24

1 our opinion services, management services and advisory, and
2 then there's different practice groups that would fall within
3 those verticals.

02:08:40

4 Q. Okay. Let take the opinion services vertical first. What
5 sort of work does -- takes place within that opinion vertical?

6 A. Sure. So that would include the Expert Testimony Practice
7 Group, which I am a part of, and it's the largest practice
8 group within the firm, as well as the Evaluation Practice
9 Group.

02:08:49

10 Q. Any other groups?

11 A. No, that would be it.

12 Q. Okay. Then second you mentioned a management practice
13 vertical; is that correct?

14 A. That's correct.

02:08:56

15 Q. What type of work does Ocean Tomo perform within that
16 vertical?

17 A. That's typically our Strategy Practice Group, and a
18 component of that would be risk management services, as well
19 as patent analytics services.

02:09:13

20 Q. And what's your understanding of risk management services?

21 A. That's really focusing on identifying, mitigating and
22 managing primarily the liability that companies might face
23 with future patent infringement lawsuits.

02:09:31

24 Q. And then you mentioned a second group within the strategy
25 group. Is that a management group?

1 A. Can you repeat that?

2 Q. Sure. I thought that you said within the strategy group,
3 there are really two different functions that are performed?

4 A. Oh, so the second one was patent analytics.

02:09:43

5 Q. Patent analytics. And can you explain to me what type of
6 work is involved in patent analytics?

7 A. Sure. That's helping clients understand the quality of
8 the portfolio that they currently own and how they compare to
9 others in that particular field.

02:09:55

10 Q. Okay. And then I think mentioned the third vertical is
11 the advisory services?

12 A. Correct.

13 Q. And what type of work takes place within that advisory
14 services vertical?

02:10:05

15 A. Sure. So that would be our investments practice group, as
16 well as our transactions practice group, which I think
17 currently is going by the name of IP brokerage.

18 Q. Anything else?

19 A. I believe that's it.

02:10:14

20 Q. So you mentioned that you're a director in Ocean Tomo's
21 Financial Expert Testimony Group; is that right?

22 A. That's correct.

23 Q. And is there a way that you refer to that group? That's a
24 mouthful. Is there a way that you refer to that group more

02:10:30

25 generally within Ocean Tomo?

1 A. Sure. So we typically refer to it as ET, Expert
2 Testimony, but the name of the group has changed throughout my
3 tenure there. We've been financial services, expert services,
4 expert testimony, financial testimony, some combination
02:10:45 5 thereof, but most typically you'll hear it referred to as
6 Expert Testimony, or ET.

7 Q. Okay. If I refer to it as Expert Testimony today, will
8 you understand what I'm referring to?

9 A. Yes. I'll assume that it means the practice group that's
02:10:56 10 focused on quantifying financial damages in litigations.

11 Q. Okay. Now, specific to your function at Ocean Tomo, what
12 do you do within that Expert Testimony Group?

13 A. So most of my work is focused on coming up with what we
14 think is the proper damages number in primarily patent
02:11:17 15 infringement cases, and there's a lot of work with coming up
16 with the final number.

17 Typically, the first step that we do in any case is
18 our fact-finding investigation. And I did prepare a
19 demonstrative that shows the type of work that we typically
02:11:30 20 do.

21 MR. SPENCE: Dave, could you pull up PD 81.

22 BY MR. SPENCE:

23 Q. Is this the demonstrative that you prepared?

24 A. I don't have my screen here, but, yes, I can see it over
02:11:42 25 here.

1 THE COURT: Hang on one second. I'll get it up.

2 BY THE WITNESS:

3 A. Yes, it is. And this is a demonstrative that we typically
4 use when we're presenting our findings in a trial setting, and
5 it's really just laying out the amount of work that goes into
6 coming up with our expert opinion.

7 So we're reviewing the court filings, legal
8 documents. We review the patents that are at issue, the
9 relevant case law, which will dictate what types of damages
10 are appropriate. We also have access to all internal company
11 documents that were produced as part of the discovery.

12 And within that, we review license agreements that we
13 think are relevant. We review other agreements that might
14 have bearing on the case. We've looked through a tremendous
15 amount of financial documents. We review depositions, all the
16 transcripts, all the exhibits. It's really a lot of
17 information that we process when we're coming up with our
18 expert opinion.

19 BY MR. SPENCE:

20 Q. And as part of your work at Ocean Tomo, have you actually
21 testified before?

22 A. I have issued -- I've been the testifying expert on two
23 reports, and I've given one deposition.

24 Q. Have you testified at trial before?

25 A. No. This is my first time.

1 Q. I'm guilty of this, too, so I'm not casting any blame, but
2 it would probably help the court reporter a great deal if
3 you'd just slow down a little bit with your answers.

4 A. Oh, sure.

02:12:55

5 Q. And I'll slow down as well, absolutely. We're all guilty
6 here.

7 Beyond reviewing the documents that you talked about,
8 is there anything else you do as part of your work in the
9 Expert Testimony group?

02:13:05

10 A. Sure. And that would include the final two items noted on
11 the circle, where we will conduct interviews with who we
12 think is -- who's really the most relevant people that we
13 should be talking to within the company.

02:13:23

14 So that could be, you know, financing individuals,
15 marketing, sales, technical personnel who have expertise on
16 the particular patent that's being litigated or the product
17 that's at issue. And then if the case warrants, we also do
18 our own independent market research, our own independent fact
19 finding.

02:13:39

20 Q. And how do you determine if the case warrants it?

21 A. It's if you need additional background for the information
22 and if you have to put the broader -- if you need broader
23 context to the damages that you're claiming.

02:13:53

24 Q. Now, you've listed a lot of different items in fact
25 finding. What's the purpose of doing all this work?

1 A. Sure. So with all this fact finding that we understand
2 what are the issues of the case. You know, what are the
3 damages that are the most appropriate.

4 And with that, we can begin to start drafting the
5 expert report and putting together the financial model.

02:14:05

6 Q. And how long does this fact finding typically take?

7 A. It really does depend on the size of the case obviously,
8 but it's pretty typical for it to take a few months where
9 that's our primary focus.

02:14:19

10 Q. Do you have any idea as to how many hours, how many man
11 hours might be involved during that fact finding?

12 A. You know, I've never done the calculation, but I'm sure
13 it's too many.

02:14:32

14 Q. What does your team do once they've completed the fact
15 finding?

16 A. So as I alluded to earlier, that's when we start to put
17 pen to paper, start drafting the expert reports, start putting
18 together the financial model.

02:14:41

19 And, you know, the expert report is really our effort
20 of summarizing the most relevant information from what could
21 be hundreds of thousands of pages of information that we
22 reviewed in the fact-finding process to summarize and support
23 what we think is the proper amount of damages.

02:14:58

24 And very similarly with our financial model, we're
25 taking a large amount of financial data and drilling it down

1 to one number of what we think are the proper damages.

2 Q. Okay. With respect to patents in particular, what are the
3 factors you consider to get to that final number?

4 A. So there -- so you have to remember we're calculating
02:15:13 5 damages in a litigation setting, so a lot of our methodologies
6 are dictated by the relevant case law, and there's two cases
7 that we typically review, and that would be the *Panduit* case
8 and *Georgia-Pacific*.

9 So some of the factors we would consider, the first
02:15:28 10 is from the *Panduit* case is are lost profits appropriate? And
11 there's four factors that you'd consider underneath that. And
12 then we also look at the *Georgia-Pacific* factors, which I know
13 I brought a demonstrative just laying out the 15 factors.

14 MR. SPENCE: Sure. And, Dave, could you pull up PD
02:15:44 15 82.

16 BY THE WITNESS:

17 A. So this is a screen shot of the actual case, but I do have
18 a second demonstrative which makes it more readable.

19 MR. SPENCE: Dave, pull up PD 83. Thank you.

20 BY MR. SPENCE:

21 Q. Is this the demonstrative that you prepared?

22 A. Yes.

23 Q. And would this assist you in your testimony today?

24 A. It would.

02:16:04 25 So I'm sure you've heard of these factors before.

1 THE COURT: I have. And unless there's a need to go
2 through them, I don't need to hear them again. I've used them
3 in cases when I was a lawyer, so --

4 BY MR. SPENCE:

02:16:17

5 Q. Good. Let me ask you about profitability at Ocean Tomo.
6 Based on the nine or so years you've been employed there, do
7 you have any idea of the profitability of the company as a
8 whole?

9 A. Yes. I know that the firm is generally profitable.

02:16:30

10 Q. Now, with respect to the specific verticals or the
11 specific groups that you've talked about within Ocean Tomo, do
12 you have any understanding as to the profitability of the
13 groups versus the company as a whole?

02:16:41

14 A. Yes. I know that the Expert Testimony Practice Group is
15 typically the most profitable practice group within the
16 company.

17 Q. How do you know that?

02:16:54

18 A. As I've mentioned, I've put together presentations that
19 I've given to the entire firm where I discuss our results, so
20 I've had access to the underlying financial data.

21 And then I think also just being part of the Expert
22 Testimony Practice Group, you're aware that you're providing
23 the lion's share of work.

02:17:09

24 Q. What's your understanding of the proportion of revenue
25 driven by the Expert Testimony Group versus the remainder of

1 Ocean Tomo?

2 A. So it's varied over time and on an annual basis, it can
3 be -- it can be different, but it's pretty typical for ET to
4 be within 60 to 75 percent of total revenue, profits.

02:17:24

5 THE COURT: Of all of Ocean Tomo.

6 THE WITNESS: Of all of Ocean Tomo.

7 THE COURT: Okay.

8 BY MR. SPENCE:

02:17:32

9 Q. Now, you've mentioned that you've been with Ocean Tomo
10 since 2008. Based on that time that you've been with the
11 company, are you familiar with PatentRatings?

12 A. I am.

13 Q. What is your understanding of PatentRatings?

02:17:44

14 A. So I understand that PatentRatings technologies or
15 software was one of our service offering at a point in time.

16 Q. And what, if anything, do you understand about that
17 software?

02:17:58

18 A. Sure. So I understand that that software pulls patent
19 data from various sources and compiles them into algorithms to
20 make really two predictions. The first, it's predicting
21 whether a specific patent is likely to be maintained, and we
22 originally call that an IPQ score, kind of being a play off of
23 IQ score, and then eventually it was rebranded to OTR score,
24 but really if you hear IPQ or OTR, it's going back to the idea
25 of what's the likelihood of the patent being maintained.

02:18:19

1 Q. In your work in the Expert Testimony Group at Ocean Tomo,
2 do you use PatentRatings in any way?

3 A. Typically, we do not use it.

4 Q. And so you personally don't use it; is that right?

02:18:32

5 A. Correct. I do recall putting in some patent numbers in
6 the software back when I was an analyst and an associate, but
7 it was never used in any kind of client deliverables, never
8 used in any analysis that we provided.

02:18:51

9 Q. Okay. Are you personally aware of anyone else at Ocean
10 Tomo using the PatentRatings software, PatentRatings product,
11 in any of the expert testimony work at Ocean Tomo?

02:19:10

12 A. So I'm personally aware of one situation. It was a
13 particular case where we provided our typical financial
14 damages work, and then we included the appendix, PatentRatings
15 output that was part of a patent and royalty trust, which is
16 one of our risk management products.

17 Q. Do you recall the name of that engagement?

18 A. Yes, it was Hewlett-Packard-Nomadix.

19 Q. Do you recall any others?

02:19:23

20 A. No, it's the only one I know from my personal experience.

21 Q. You testified that you personally don't use PatentRatings
22 in your work in Expert Testimony at Ocean Tomo. Why not?

02:19:41

23 A. There's several reasons for that. One, it goes back to
24 we're doing this in a litigation setting so we have to abide
25 by what the relevant case law is and what methodologies are

1 allowed by the courts.

2 And the PatentRatings system is essentially a black
3 box. If we were ever asked to explain, you know, why is this
4 score falling out this way versus another, we would never be
02:19:56 5 able to explain that, so there was always a concern that it
6 wouldn't pass the standards set by the relevant case law.

7 Secondly, Expert Testimony work is typically focused
8 on one patent or a small handful, and even then, it's just the
9 few claims that are being asserted. And really PatentRatings'
02:20:16 10 technology seems to be better suited for large patent
11 portfolios, as opposed to our analysis, which really is
12 focused on just one or a handful of patents. So just the need
13 isn't there.

14 And then, thirdly, this goes back to the fact finding
02:20:32 15 that we do as part of our practice group. You know, we really
16 do have access to information that was specifically produced
17 that speak to the accused products at issue, to the patent at
18 issue. We have access to personnel who know the ins and out
19 of the technology and of the accused products. We review all
02:20:50 20 the depositions, all the documents. We really do have the
21 best information available at our fingertips, so there's no
22 need for us to rely on an algorithm.

23 MR. SPENCE: No further questions, your Honor.

24 THE COURT: All right. Cross-examination.

02:21:03 25 CROSS-EXAMINATION

1 BY MS. CILIBERTI:

2 Q. Good afternoon, Ms. Johnson.

3 So you described a moment ago that Ocean Tomo is
4 segmented into different business units; is that right?

02:21:30

5 A. Yes.

6 Q. For instance, some of the ones you mentioned, expert
7 testimony, valuation, strategy, risk management; is that
8 right?

9 A. Correct, and others.

02:21:44

10 Q. Right. Up until roughly sometime in 2015, the
11 PatentRatings analysis was used in the valuation business
12 unit, right?

13 A. I believe it was sometimes used in the valuation business
14 unit.

02:22:03

15 Q. And up about sometime at the end of 2015, maybe into 2016,
16 the PatentRatings analysis was used in the strategic analysis
17 or the strategy business unit as well, right?

18 A. Correct. There were times where it would be used and
19 times where it would not be used, correct.

02:22:24

20 Q. Also, until 2016, the PatentRatings analysis was used in
21 Ocean Tomo's investment group, right?

22 A. Yes, in a similar way that I just described. Sometimes it
23 would be used, and sometimes it would not be used.

02:22:43

24 Q. And as you noted, PatentRatings data analysis has been
25 used in the expert group as well, correct?

1 A. I think there's been a few exceptions where it has been
2 used, correct.

3 MS. CILIBERTI: Okay. So I want to go back to the
4 valuation business unit, and could you pull up Defendants'
5 Exhibit 183, please.

02:23:00

6 Excuse me, I'll bring you a binder.

7 Your Honor, may I approach?

8 THE COURT: You may, although it's up on the screen
9 now, so if it's easier just to use it.

02:23:23

10 MS. CILIBERTI: We're going to be flipping through
11 kind of a lot of pages, so I thought it might be easier.

12 THE COURT: That's fine.

13 (Tendered.)

14 THE WITNESS: Thank you.

02:23:32

15 MS. CILIBERTI: Do you want a copy as well?

16 THE COURT: Sure.

17 (Tendered.)

18 THE COURT: Thank you.

19 MS. CILIBERTI: Sure.

02:23:37

20 BY MS. CILIBERTI:

21 Q. Okay. So I recognize you're not on the cover e-mail of
22 this exhibit, but I'm not going to be asking you about the
23 cover e-mail. If you could just turn to the second -- well,
24 the third page, where we see the Ocean Tomo logo. And I

02:24:11

25 believe this same report continues on for 30 pages or so, but

1 if you would just take a quick look and tell me whether you've
2 seen this document before.

3 A. I have not seen this document in my role as an employee
4 and as a fact witness within Ocean Tomo. I believe I may have
02:24:36 5 seen this document in my role as a rebuttal expert to
6 Mr. Pakter.

7 Q. Okay. So when -- when was that when you last saw this
8 document?

9 MR. SPENCE: Your Honor, just want to object on basis
02:24:51 10 of scope. She's here as a fact witness. We may call her as a
11 rebuttal witness later in the case. She can't answer
12 questions as a rebuttal witness until we know what
13 Mr. Pakter's testimony will be at trial.

14 MS. CILIBERTI: May I respond?

02:25:04 15 THE COURT: Sure.

16 MS. CILIBERTI: We don't intend to get into any of
17 the expert testimony here. She was designated as a corporate
18 representative on topics such as the Ocean Tomo work product
19 and the PatentRatings' use in the work product, so we're just
02:25:16 20 going to go through the -- her knowledge of the facts in that
21 regard.

22 THE COURT: All right. Well, if she's only seen this
23 document, though, in the context of being a rebuttal expert
24 witness, I'm not sure how far you can go with this document.
02:25:31 25 But if she was the 30(b)(6) witness on a number of topics

1 that -- the ones you just stated, that's fine.

2 What is she -- what is Ms. Johnson going to be an
3 expert witness on?

4 MR. SPENCE: She's going to respond to Mr. Pakter's
5 damages report.

6 THE COURT: All right. His damage report deals with
7 the royalties that the defendant says were not paid to him.

8 MR. SPENCE: To be more precise, he has two different
9 reports. One is on royalties and one is on

10 payment distributions or allocations.

11 THE COURT: All right. And which one of those is
12 Ms. Johnson going to be the rebuttal to Mr. Pakter?

13 MR. SPENCE: Royalties.

14 THE COURT: Royalties, all right.

15 Well, go ahead. We'll see how it goes.

16 MS. CILIBERTI: Okay. Thank you, your Honor.

17 BY MS. CILIBERTI:

18 Q. So, Ms. Johnson, do you recall when was the last time you
19 saw this document roughly?

20 A. Within the last month or two, month and a half perhaps.

21 Q. Does it appear to be in substantially the same condition
22 as the last time that you saw it?

23 A. You know, I don't know. I reviewed thousands of documents
24 as part of my work as a rebuttal witness, and I couldn't tell
25 you if this is in the same form or not.

1 Q. Just skimming through it, does anything look different to
2 you?

3 A. I honestly couldn't tell you because, you know, again, I
4 reviewed thousands of documents and thousands upon thousands
02:27:02 5 of pages of documents, so, you know, I have no reason to
6 believe that this isn't the complete document, but I have no
7 recollection if this would be the same document that I
8 reviewed.

9 THE COURT: Are you trying to lay a foundation to get
02:27:14 10 it admitted?

11 MS. CILIBERTI: Yes, your Honor.

12 THE COURT: Oh. Is there any objection to its
13 admission? Other than relevance, which won't become evident
14 to me until later in the trial, but there's no foundation
02:27:25 15 objection, I assume.

16 MR. SPENCE: Yes, I apologize, your Honor. I was
17 originally offered a copy and declined it, but if we can look
18 at it for purposes of admitting it, I'd like to see a copy.

19 THE COURT: All right. It's a multi-page document.
02:27:39 20 Looks like it's in order, so last page has a signature of
21 Ocean Tomo.

22 MR. SPENCE: So, your Honor, with respect to DX 183,
23 the only objection would be to the e-mail from Mr. Evan Lee,
24 there's no foundation for.

02:28:25 25 THE COURT: Sure. DX 183 is admitted, absent the

1 e-mail, which is something this witness can't lay a foundation
2 for.

3 And as to its relevance, I'll have to judge that as I
4 get deeper into the case. So the rest of the -- other than
5 the e-mail, DX 183 is admitted.

02:28:39

6 (Defendants' Exhibit No. 183 was received in evidence.)

7 MR. SPENCE: And the other issue we may need to
8 address, your Honor, and frankly I don't know offhand, but
9 many of these engagements are subject to confidentiality or
10 protective orders, so we may need to do something to place it
11 under seal.

02:28:52

12 THE COURT: We'll deal with that off line. You'll
13 deal with the other side off line. It occurred to me when I
14 heard the opening, there's an awful lot of fairly what I would
15 think clients would view as very sensitive information that's
16 being put of public record, but that's the price, as I've said
17 in court, that's the price you pay for doing this as a federal
18 trial in open court, as opposed to a private arbitration. I'm
19 not sure there's much I can do about that. I'm not going to
20 lock the courtroom.

02:29:05

02:29:23

21 So this is admitted, and you can deal with protective
22 order issues off line.

23 MR. SPENCE: Thank you.

24 THE COURT: Go ahead.

02:29:31

25 MS. CILIBERTI: Thank you, your Honor.

1 BY MS. CILIBERTI:

2 Q. Ms. Johnson, if you could please turn to Page 4 of this
3 report.

4 A. Yes.

02:29:43

5 Q. And by the way, I should have asked you before. Do you
6 know what this document is?

7 A. It looks to be a valuation report concerning certain IP
8 assets owned by PrinterOn Corporation that was issued back in
9 May of 2011.

02:30:13

10 Q. Okay. And so now flipping back to Page 4, heading 3.2
11 says quality of patent portfolio. Do you see that?

12 A. I do.

13 Q. And the first sentence there says, "Ocean Tomo's
14 PatentRatings system uses advanced econometric-based

02:30:35

15 algorithms incorporating over 35 independent variables applied
16 to its proprietary database of the U.S.-issued patent
17 universe."

18 Did I read that correctly?

19 A. Yes.

02:30:43

20 Q. Isn't it true that this section of the report, which
21 appears to continue on to the next page, was -- incorporates a
22 PatentRatings analysis?

23 A. Yes, it appears to.

24 Q. And over on Page 5 where we see Table 1, that table also
25 incorporates a PatentRatings analysis, correct?

02:31:09

1 A. Correct. It contains an IPQ score for a particular
2 patent.

3 Q. Ms. Johnson, is this an example of how the PatentRatings
4 system is used in Ocean Tomo's valuation business?

02:31:25

5 MR. SPENCE: Just object on the basis of foundation.

6 THE COURT: If she knows.

7 Go ahead.

8 BY THE WITNESS:

9 A. Well, it appears to be the way it is used.

02:31:34

10 BY MS. CILIBERTI:

11 Q. Now, if you'll flip ahead in this same document about
12 halfway through, you'll come to another cover page looks like.

13 THE COURT: What page?

14 MS. CILIBERTI: Well, the numbering restarts, your
15 Honor, so it's after Page 36.

02:31:51

16 THE COURT: Oh, I see. All right. And on the
17 renumbered pages, what page is it?

18 MS. CILIBERTI: Actually -- the cover page actually
19 doesn't have a number.

02:32:06

20 THE COURT: Oh, I see, Provisional Assessment of
21 Palm, Incorporated?

22 MS. CILIBERTI: Yes.

23 THE COURT: Are you there?

24 THE WITNESS: I am.

02:32:14

25 THE COURT: Okay. Go ahead.

1 BY MS. CILIBERTI:

2 Q. Ms. Johnson, if you could flip through and let me know
3 whether you've seen this document before?

02:32:31

4 A. Again, I would expect that I have not seen this as my
5 personal capacity within Ocean Tomo, but perhaps that I have
6 seen it as part of my role as a rebuttal witness in this case.

7 Q. And when would have been the last time that you saw it?

02:32:54

8 A. If this is one of the documents I've listed in my rebuttal
9 expert report, I would have seen it in the last month,
10 month-and-a-half timeframe.

11 Q. Okay. And this is another example of a valuation report,
12 correct?

13 A. Yes, it appears to be.

02:33:19

14 Q. This is for a different client though, correct, it's Palm,
15 Inc.?

16 A. Correct.

17 Q. Okay. If you'll turn to Page 5 of this report, you'll see
18 Table 3.

19 A. Yes.

02:33:32

20 Q. And Table 3 is titled Palm Patents Issued By Class Year;
21 is that right?

22 A. Yes.

23 Q. And isn't it true that the data in this table is a product
24 of the PatentRatings system?

02:33:48

25 A. I see no indication that it's a product of the

1 PatentRatings system. I'm trying to see what sources are
2 cited here, looking at the lead-in paragraph.

3 I have no reason to believe one way or the other if
4 this is an outlet from the PatentRatings system, as opposed to
5 from some other source.

02:34:17

6 Q. Okay. If you'll flip to the following page, Figure 1.

7 A. Yes.

8 Q. It says, "Age of Palm's U.S. patents."

9 Isn't it true that the data in this figure is a
10 product of the PatentRatings system as well?

02:34:34

11 A. Again, I don't see anything that indicates whether it is
12 or is not. I would imagine that this information could be
13 compiled without the use of the PatentRatings system.

14 THE COURT: Which table are you on?

02:34:55

15 THE WITNESS: Figure 1.

16 THE COURT: Oh, Figure 1.

17 THE WITNESS: On Page 6.

18 BY MS. CILIBERTI:

19 Q. But you don't know whether the data in this report was
20 gathered using the PatentRatings system; is that right?

02:35:05

21 A. Correct. This report does not indicate the PatentRatings
22 system as being a source for the information in this table.

23 THE COURT: Well, Table 4 has an IPQ score.

24 That's --

25 MS. CILIBERTI: I was going there next, your Honor.

1 THE WITNESS: Figure 1?

2 THE COURT: Yeah, I'm just going to Table 4, the next
3 page. I'm jumping ahead a little bit, but clearly there's
4 multiple references to the IPQ score as you page through the
5 rest of the document.

02:35:33

6 THE WITNESS: Agreed.

7 THE COURT: And if it says IPQ score, is that the
8 PatentRatings system --

9 THE WITNESS: Correct.

02:35:39

10 THE COURT: -- as far as you know?

11 Okay. I get it. Off the record for a minute.

12 (Discussion held off the record.)

13 THE COURT: Let's go on the record.

14 Sorry, I raised the issue with the parties of this
15 document, which has now been admitted into evidence in this
16 case, was a document that was commissioned by Finnegan
17 Henderson, where they apparently retained Ocean Tomo to do an
18 analysis. It's marked privileged and confidential, prepared
19 at the direction of counsel.

02:36:20

20 I don't know if this became part of a lawsuit and was
21 made public in a lawsuit. I'd be kind of surprised if it was.
22 Has anyone addressed the privilege issues on this during Judge
23 Rowland -- was it addressed or discussed during the discovery
24 process with Judge Rowland?

02:36:39

02:36:57

25 MR. LAYDEN: Your Honor, there -- and I'll speak to

1 that because Ms. Ciliberti was not as involved in the
2 discovery process as I was.

02:37:11

3 Ocean Tomo had raised at different points in time
4 objections based upon confidentiality and I believe even work
5 product. I don't believe that issue was actually expressly
6 addressed in front of Judge Rowland. I don't think she
7 actually reached it. These documents were produced in the
8 case by Ocean Tomo, which is why we're using them.

02:37:23

9 THE COURT: All right. Well, confidentiality is one
10 thing. That's covered by a protective order. Privilege is
11 something different, but I didn't know if it was something the
12 parties were concerned about, but --

02:37:36

13 MR. SPENCE: The issue, unfortunately, is one much
14 more complex even than you're acknowledging, because remember
15 Mr. Barney has many of these documents, has produced them to
16 us, and so in many cases they're not even from our own
17 production.

02:37:46

18 THE COURT: Well, I don't see -- is there a Bates
19 number on this?

20 MR. LAYDEN: This one is an Ocean Tomo document.

21 MR. SPENCE: This particular document is an Ocean
22 Tomo document.

23 THE COURT: Okay. I see it.

02:37:55

24 MR. SPENCE: But as I've alluded to, in many cases
25 you'll see other documents throughout this case that have been

1 produced to us where we don't have the opportunity to address
2 the issue, frankly.

3 THE COURT: Well, I guess it's another reason why I
4 encouraged you many, many times to settle this case, but
5 please proceed.

02:38:05

6 MR. LAYDEN: Thank you, your Honor.

7 MS. CILIBERTI: Thank you.

8 BY MS. CILIBERTI:

9 Q. Ms. Johnson, if you could now turn to Exhibit 458.

02:38:20

10 A. Yes, I'm there.

11 Q. Have you seen this document before?

12 A. I believe my answer would be similar to my prior answers
13 where I have not seen this document in my role as director in
14 Expert Testimony, but to the extent that it's in the rebuttal
15 expert report listed on the document index, then I may have in
16 that capacity.

02:38:48

17 Q. Does it appear to be in substantially the same condition
18 as the last time you saw it?

19 A. Again, you know, I really couldn't tell you. I have no
20 reason to believe that this isn't the same document if I had
21 reviewed it, but I can't tell you definitively one way or the
22 other.

02:39:00

23 MS. CILIBERTI: Your Honor, we submit Defendants'
24 Exhibit 458 to be admitted.

02:39:15

25 THE COURT: You're moving for the admission of DX

1 458. Any objection?

2 MR. SPENCE: Your Honor, it's just really the same
3 concern, and I'll note that most of the production in this
4 case was done by predictive coding so in many cases we're
5 seeing documents for the first time. We haven't had a chance
6 to review some of these documents.

7 I don't know if this is one such document, but we
8 have raised issues of confidentiality and privilege throughout
9 this litigation. I just don't know if this is governed by a
10 protective order such that we need to take any action, but
11 we'll certainly look at that and, as you've noted with the
12 earlier exhibit, address that off the record if necessary.

13 THE COURT: All right. DX 458 is admitted. Go
14 ahead.

15 (Defendants' Exhibit No. 458 was received in evidence.)

16 BY MS. CILIBERTI:

17 Q. Ms. Johnson, this report is an example of work product
18 from the strategic analysis group of Ocean Tomo; is that
19 right?

20 A. I don't know if it's part of the Strategy Practice Group
21 or if it was a valuation project that had strategy
22 recommendations without seeing the invoices or the engagement
23 letter that ties this to a specific managing director. I
24 couldn't tell you definitively whether it would be the
25 Strategy Practice Group or some other group.

1 Q. The title is Mobile Communications IP Strategy, correct?

2 A. That is correct.

3 Q. Doesn't IP strategy seem to suggest that it's from the
4 strategic analysis group?

02:41:21

5 MR. SPENCE: Objection. Calls for speculation.

6 THE COURT: If she knows.

7 Overruled.

8 BY THE WITNESS:

02:41:28

9 A. I mean, it's one indication that it could be within that
10 practice group, but I also know that the valuation practice
11 group would have strategy recommendations as part of their
12 valuations, potentially same with the risk management practice
13 group, they would have strategic recommendations.

02:41:44

14 So that one word alone is not enough for me to make
15 the determination that's within the practice group, and I can
16 admit that there are strategic recommendations in this
17 document, but I can't pinpoint it to a particular group.

18 BY MS. CILIBERTI:

19 Q. Okay. If you could turn to Page 16, please.

02:42:06

20 A. Yes.

21 Q. And do you see there heading 5 says IP Landscape Analysis,
22 correct?

23 A. Correct.

02:42:21

24 Q. And then if you'll flip ahead to Page 21, please, there's
25 another heading that this says 5.2 SQM.

1 A. Yes.

2 Q. And the second sentence under the SQM heading says, "IP
3 landscape surrounding the iPass-owned patents for service
4 quality, monitoring and network categorization is crowded with
5 relevant intellectual property as can be seen in Exhibit 1,
6 the portfolio analysis report."

7 Did I read that correctly?

8 A. Yes.

9 Q. Isn't it true that a portfolio analysis report is a piece
10 of work product that is generated by the PatentRatings system?

11 A. It's true that there is PatentRatings output that is
12 included in a portfolio analysis report, but the reports I've
13 seen that are PARs for short also include some consulting
14 services as well. It depends on -- on the actual underlying
15 PAR.

16 Q. And the discussion of IP landscape, that also refers to
17 subject matter that incorporates PatentRatings analysis,
18 correct?

19 A. Well, IP landscape is a broader term. I understand that
20 there's one PatentRatings output that provides for landscape
21 charts, but if you just see the term IP landscape, that could
22 include analysis that has nothing to do with the PatentRatings
23 system, but it could as well. It would depend on the context.

24 Q. In this context where it's referring to Exhibit 1, the
25 portfolio analysis report, isn't it reasonable to conclude

1 that it is referring to PatentRatings data and analysis?

2 A. Again, I mean, it might be -- I would really have to see
3 the underlying portfolio analysis report. While I understand
4 that PatentRatings has a report that is called portfolio
02:44:12 5 analysis report, that is also a description of an analysis
6 that you could do that could or could not rely on
7 PatentRatings technology.

8 So while it could be an indicator that PatentRatings
9 technology was used, it's not definitive one way or the other.

02:44:29 10 Q. Okay. If you could turn to Page 24, there's a chart at
11 the top of the page listing a number of companies' active
12 patent counts and relevant patent counts, et cetera.

13 Isn't it true that the data in this chart also came
14 from the PatentRatings system, Ms. Johnson?

02:44:52 15 A. There's nothing in the text that would lead me to know
16 one way or the other if this came from the PatentRatings
17 system.

18 Q. So patent relevance isn't something that is analyzed
19 through the PatentRatings system?

02:45:18 20 A. The PatentRatings system, as I understand, gives out a
21 relevance score. I don't know if that was the underlying
22 metric that was used to compile the relevant U.S. patent count
23 or if that was done through a technical review of all the
24 patents.

02:45:37 25 You know, it may have been. It's just not clear by

1 looking at the pages that you indicated for me.

2 Q. Ms. Johnson, you recall being designated a corporate
3 representative in this for the 30(b)(6) deposition of Ocean
4 Tomo in this case?

02:46:09

5 A. I do.

02:46:25

6 Q. Do you remember being designated the corporate
7 representative for the topic described products and services
8 sold by Ocean Tomo that included, reported, used, relied upon
9 and/or considered any PatentRatings analysis including data
10 subscriptions, report products and related services concerning
11 patent appraisals, valuations, expert testimony, strategic
12 analysis, research, consulting, investment analysis and
13 transactions?

02:46:43

14 A. I lost the first part of your sentence. Was it --

15 Q. Understandable.

16 A. -- do I recall?

17 Q. Do you recall being designated as the corporate
18 representative for that topic?

02:46:52

19 A. I obviously don't have a perfect recollection of that
20 topic as you stated, but that sounds right.

21 Q. If you would turn, please, to Exhibit 455. Have you seen
22 this document before?

02:47:37

23 A. Again, I don't recall seeing this document within my role
24 within Expert Testimony. To the extent that it would be
25 listed in my documents considered in the rebuttal expert

1 report, I may have.

2 Q. Does it appear to be in substantially the same condition
3 as the last time you saw it, or do you have reason to believe
4 that it is not?

02:47:49

5 A. Similar to before, I couldn't tell you definitively if
6 it's in the same form, but I have no reason to doubt that it
7 is.

8 MS. CILIBERTI: Your Honor, we move to admit
9 Defendants' Exhibit 455.

02:48:07

10 THE COURT: All right. Any objection beyond those
11 already stated?

12 MR. SPENCE: Same objections already stated,
13 relevance and foundation.

14 THE COURT: All right. DX 455 is admitted.

02:48:21

15 (Defendants' Exhibit No. 455 was received in evidence.)

16 BY MS. CILIBERTI:

17 Q. Ms. Johnson, this report is titled Project Liberty,
18 Intellectual Property Sensitivity Analysis, correct?

19 A. Correct.

02:48:28

20 Q. Does this appear to be an example of work product from the
21 investment business unit?

22 THE COURT: What is the relevance of the unit that
23 these reports are derived from?

24 MS. CILIBERTI: Your Honor, Ocean Tomo is trying to
25 make the point that they only use the PatentRatings in one

02:48:56

1 particular area or a small portion of their business, whereas
2 the reports from various different business units incorporate
3 PatentRatings analysis.

02:49:08 4 THE COURT: Well, I think the witness admitted that
5 it's used occasionally in a variety of their businesses, not
6 very much in Expert Testimony for reasons she stated, but it's
7 used in three or four other areas occasionally. It's used in
8 the valuation business, used in the strategy business, used in
9 the investment group, a few times used for Expert Testimony.

02:49:27 10 So, I mean, it's billed out one way or the other.
11 I'm not sure of the relevance of which unit it is, it's a
12 knowable fact.

02:49:44 13 Go ahead, but I'm just not sure it's necessarily a
14 fact I'm going to have to focus on to make a decision on the
15 case. But go ahead with your questions. I just wanted to
16 make that observation.

17 MS. CILIBERTI: Okay, your Honor.

18 THE WITNESS: Can you repeat your question?

19 THE COURT: Which unit?

02:49:54 20 THE WITNESS: Which unit? Again, I couldn't tell you
21 definitively without seeing the invoices or the charge codes
22 or the engagement letter. It could be within the investment
23 practice group. I just don't know one way or the other.

24 BY MS. CILIBERTI:

02:50:09 25 Q. Okay. If you will flip to Slide 3, please, titled

1 Conclusions.

2 A. Yes.

3 Q. The third bullet down says, "The PCR space is highly
4 competitive. Purely from a quantitative perspective, many
02:50:34 5 competitors have higher quality IP portfolios than LIFE."

6 LIFE appears to be the client who this work product
7 was provided to, correct?

8 A. It appears to be one of the companies that's referenced.
9 I don't know if it's the client or the target company that was
02:50:53 10 analyzed, but it's -- it's a relevant company in this
11 document.

12 Q. Okay. The quality of IP portfolios, which is referenced
13 in the third bullet point there, is ranked using the
14 PatentRatings system, correct?

02:51:19 15 A. There's nothing in this bullet point that indicates that
16 it's the PatentRatings system versus something else. Again,
17 it may have been from the PatentRatings system. I would have
18 to look at more of the document potentially to know
19 definitively.

02:51:33 20 Q. My question was a little more general, and that is that
21 the PatentRatings system ranks quality of patents in IP
22 portfolios, correct?

23 A. That is one of the outputs or one of the metrics that you
24 can use the PatentRatings system to perform, but I believe
02:51:54 25 there are other ways to also rate quality of IP portfolios

1 outside of the PatentRatings technology.

2 Q. Understood.

3 If you'll flip to Slide 8, please.

4 A. Yes.

02:52:09

5 Q. We have a table here, and the fourth column from the left
6 says AV OTR, and I'm assuming that means average OTR, correct?

7 A. I'm sorry, where -- oh, the third column, yes.

8 Q. Fourth.

02:52:30

9 A. Fourth column, yes. I would assume that also means
10 average OTR.

11 Q. And as you testified before, OTR is just another branding
12 of the PatentRatings system, correct?

13 A. Correct. That is one of the terms that we use for either
14 IPQ scores or OTR scores.

02:52:45

15 Q. And on the very next slide, we have competitor landscape.
16 This also is data that comes from the PatentRatings system,
17 correct?

18 A. Yes. As it references the OTR scores on the bottom of
19 that landscape, I would assume that this is from the

02:53:03

20 PatentRatings system.

21 Q. Okay. And I'm not going to go through this lengthy
22 document, but if you just flip through, isn't it true that
23 there's quite a few landscape maps that we've seen in some of
24 the other documents and tables with OTR scores?

02:53:25

25 A. Yes. That appears to be true. I've seen at least two

1 more landscape maps as I flipped through and a chart that has
2 the OTR scores, and there's more as I continue flipping.

3 Q. Okay. Let's turn to Exhibit 239, Defendants' Exhibit 239,
4 please.

02:53:44

5 A. Sure.

6 Yes, I'm there.

7 Q. Have you seen this document before?

02:54:08

8 A. It would be a similar answer in that, you know, I may
9 have, as part of my role as a rebuttal witness in this case,
10 but potentially not within my role within Expert Testimony as
11 a director.

12 Q. Does it appear to be in substantially the same condition
13 as the last time that you saw it, or do you have any reason to
14 think it is not?

02:54:28

15 A. I have no reason to think that it's not.

16 MS. CILIBERTI: Okay. Your Honor, we move to admit
17 Defendants' Exhibit 239.

18 THE COURT: All right. Same objection?

19 MR. SPENCE: Just the same objections, your Honor.

02:54:38

20 THE COURT: All right. It's admitted.

21 Defendants' 239 is admitted.

22 (Defendants' Exhibit No. 239 was received in evidence.)

23 BY MS. CILIBERTI:

24 Q. And this is an expert report, right, Ms. Johnson?

02:54:45

25 A. Yes. This is an expert report of Dr. Elvir Causevic that

1 he delivered as part of the strategic advisory services
2 practice.

3 Q. I'm sorry, where do you see the strategic advisory
4 practice?

02:55:03

5 A. On Page 1 of the document. It states that -- the first
6 sentence states, "My name is Elvir Causevic, and I'm a
7 managing director of Ocean Tomo strategic advisory services
8 practice and the company's chief technologist."

02:55:22

9 Q. Okay. Thank you. Thanks for pointing that out. The
10 front page, though, it says expert report of Dr. Elvir
11 Causevic, right?

12 A. As well as some other things on the front page, but yes.

13 Q. Some other things like the Ocean Tomo logo, correct?

14 A. Correct.

02:55:33

15 Q. And the date?

16 A. And the date and privileged and confidential.

17 Q. Thank you.

18 If you'll turn with me to Page 25, please.

19 A. Yes, I'm there.

02:55:51

20 Q. Okay. Heading 8.4.2.1. It's titled, Landscape of Patents
21 Relevant to the '311 Patent Based On Citation Relationships,
22 correct?

23 A. Yes.

02:56:12

24 Q. And I'm skipping -- I'm looking at the first sentence, but
25 the second half of it, it says, "I performed an analysis to

1 identify relevant intellectual property. My analysis was
2 performed using the Ocean Tomo PatentRatings system which
3 identifies relevant patents through a four-generational
4 citational search across the entire patent landscape of the
5 U.S.-issued patents," correct?

02:56:30

6 A. Correct.

7 Q. This is referring to an analysis using the PatentRatings
8 system, right?

9 A. Correct.

02:56:39

10 Q. And if you look down to footnote 89 as well, it says,
11 "Patents that were deemed to be relevant to the '311 patent
12 were identified through the use of Ocean Tomo's proprietary
13 PatentRatings tool," correct?

14 A. Correct.

02:56:51

15 Q. So the PatentRatings tool was used in the process of
16 creating this report, correct?

17 A. Correct. It appears that the PatentRatings tools were
18 used within this report.

02:57:14

19 Q. Okay. As you noted before, this isn't the only instance
20 that the PatentRatings tool has been used in an expert report
21 situation, right? You referred earlier to the HP-Nomadix
22 engagement, correct?

23 A. I view that case as being very different than the report
24 that we have in front of us. I know that this is titled an
25 expert report, but Mr. Causevic was not part of the Expert

02:57:34

1 Testimony Practice Group, so I think of this as being
2 fundamentally different than the HP-Nomadix matter that was
3 raised earlier.

02:57:51

4 Q. Okay. I wasn't necessarily comparing the two and going
5 through their similarities, but the function of the Expert
6 Testimony Group is to, or at least one of the functions is to
7 produce expert reports, correct?

8 A. Correct, that quantify damages in a litigation setting.

9 Q. Okay. Thank you.

02:58:08

10 Ms. Johnson, I'm done with this exhibit. You can put
11 that away.

12 A. Okay.

02:58:24

13 Q. Isn't it true that in the past, Ocean Tomo has used a
14 PatentRatings system as a method of promoting the entire
15 company?

16 A. I believe that to be true, correct.

17 Q. And are you aware that Mr. Malackowski once described
18 PatentRatings as the glue that holds Ocean Tomo together?

02:58:39

19 A. I am aware of that as part of my role as -- as an expert
20 in this case. I don't know if I was personally aware of that
21 prior to this case.

22 Q. Are you aware that Mr. Malackowski has gone on CNBC
23 multiple times to tout and provide opinions based on the
24 PatentRatings tool and analyses?

02:58:53

25 A. I don't know that specifically, but it wouldn't be

1 surprising if he had.

2 Q. And isn't it true that the Ocean Tomo website, up until
3 relatively recently, used to have numerous references to the
4 PatentRatings tools?

02:59:10

5 A. I'm not sure what you mean by relatively recently. I know
6 there were spans of time where we did have references to the
7 PatentRatings tool on the website.

8 Q. And are you -- have you heard of OT 300, Ms. Johnson?

9 A. Yes, I have.

02:59:27

10 Q. And isn't -- that is Ocean Tomo's index, correct, or
11 patents index, intellectual property index?

12 A. Yes.

13 Q. Okay. And isn't it true that that was -- involved the use
14 of the PatentRatings system?

02:59:43

15 A. Correct.

16 THE COURT: What's an IP index?

17 BY THE WITNESS:

18 A. The OT 300 was essentially a restructuring of the S&P 500,
19 I believe, where it re-weighted the -- how much you would
20 invest in a particular stock based on the IP portfolio of that
21 company. So it was using the IPQ scores as part of the
22 weighting within the distribution of the companies within the
23 index.

03:00:00

24 THE COURT: I see. All right.

03:00:17

25 MS. CILIBERTI: I have no further questions.

1 THE COURT: Any redirect?

2 MR. SPENCE: Very short redirect, your Honor.

3 REDIRECT EXAMINATION

4 BY MR. SPENCE:

03:00:26

5 Q. Ms. Johnson, do you have any understanding as to whether
6 the Ocean Tomo -- I'm sorry, strike that question.

7 Do you have any understanding as to whether or not
8 PatentRatings is currently used within Ocean Tomo today?

03:00:39

9 A. No. The technology was discontinued or practice group was
10 disbanded when we stopped using the technology in late 2015.

11 Q. Okay. I ask because earlier I maybe misunderstood, but I
12 thought you said there was some use of PatentRatings within
13 Ocean Tomo in 2016. Did I misunderstand you?

03:00:58

14 A. I believe so. I believe we discontinued the PatentRatings
15 technology in 2015. I know that we are currently relying on a
16 different firm to provide patent analytics, but it's not the
17 same technology.

18 Q. What firm does Ocean Tomo rely on today?

19 A. Innography.

03:01:10

20 Q. What do you know about Innography?

21 A. Not too much. I just know that it's another firm that
22 provides patent quality scores in landscape analysis.

23 Q. Anything else that they provide, to your knowledge?

24 A. No, nothing that comes to mind right now.

03:01:29

25 Q. Earlier you were asked about a bunch of documents. Do you

1 have any personal involvement in the creation of any of those
2 documents?

3 A. None of the ones that were shown to me today, no.

03:01:41

4 Q. To your knowledge, were any of those documents created by
5 anyone within the ET Group at Ocean Tomo?

6 A. I don't know definitively if there was any assistance from
7 anyone from the Expert Testimony Group. I don't know.

03:01:57

8 Q. When you looked through those documents that you were just
9 asked about, did you recognize any of those documents as
10 expert reports from the ET Group?

11 A. No. None of them followed what we -- our traditional
12 template that we use within Expert Testimony.

13 MR. SPENCE: No further questions, your Honor.

14 THE COURT: Any recross?

03:02:12

15 (Counsel conferring.)

16 MS. CILIBERTI: No, your Honor.

17 THE COURT: All right. Ms. Johnson, next time you
18 testify, you can now say you've testified once in federal
19 court.

03:02:23

20 (Laughter.)

21 THE WITNESS: Great.

22 THE COURT: All right. You're excused. Thank you.

23 THE WITNESS: Thank you.

24 THE COURT: Please call your next witness.

03:02:32

25 MR. LAYDEN: Your Honor, if we can just confer.

1 THE COURT: Sure, all right.

2 (Counsel conferring.)

3 MR. LAYDEN: Your Honor, the only issue, Ocean Tomo
4 is going to call Mr. D'Souza next.

03:02:53

5 THE COURT: Mr. Who?

6 MR. LAYDEN: Mr. D'Souza, who's an employee of Ocean
7 Tomo. We had been told he was going to testify third today.
8 I understand, I'm not accusing Mr. Spence of anything, they've
9 got issues in trying to get witnesses here. We're still

03:03:02

10 getting the binders prepared for his cross, so I don't know
11 whether we can take a break after the direct or whatever --

12 THE COURT: How long is his direct?

13 MR. SPENCE: It will be very short, 20 minutes.

14 THE COURT: Let's do his direct. That will be time
15 for the break anyway. We'll take our break after his direct.

03:03:13

16 MR. LAYDEN: Thank you, your Honor.

17 THE COURT: All right. Call him in.

18 All right, sir, if you can come up here, please.

19 MR. SPENCE: Your Honor, I do have a set of documents
20 for you that's hole punched, if you'd like them.

03:04:02

21 (Tendered.)

22 THE COURT: Sir, please raise your right hand.

23 (Witness sworn.)

24 THE COURT: All right. Have a seat, please.

25 ROYSTON D'SOUZA, PLAINTIFF'S WITNESS, DULY SWORN,

1 DIRECT EXAMINATION

2 BY MR. SPENCE:

3 Q. Good afternoon, Mr. D'Souza.

4 A. Good afternoon, Mr. Spence.

03:04:23 5 Q. Could you please state your full name for the record?

6 A. Royston D'Souza, and I go by Roy.

7 Q. Where do you currently work?

8 A. I work for Ocean Tomo, LLC.

9 Q. How long have you worked there?

03:04:31 10 A. A little over seven years.

11 Q. What do you do at Ocean Tomo?

12 A. I'm a managing director responsible for leading the IP
13 valuation and IP management practices.

14 Q. Have you always been a managing director at Ocean Tomo?

03:04:44 15 A. Yes.

16 Q. And have you always been responsible for managing those
17 same practices?18 A. I've always been responsible for managing the valuation
19 practice, and I took over the management of the management
03:04:54 20 practice about a year and a half ago.21 Q. Could you describe, just in general terms, what the
22 valuation practice at Ocean Tomo does?23 A. Sure. We provide independent intellectual property
24 valuation reports for our clients, and the intellectual

03:05:10 25 property we cover is a mix of patents, trademarks, copyrights,

1 trade secrets, assets of that nature.

2 We also perform in certain instances some business
3 and equity valuations.

4 Q. You mentioned various forms of intellectual property.

03:05:24

5 Does Ocean Tomo's valuation group routinely work with one type
6 of intellectual property more than the others?

7 A. I would say that we value patents and patent portfolios
8 more than 50 percent of the time.

03:05:41

9 Q. You also mentioned you're a managing director of the
10 management group; is that correct?

11 A. That's correct.

12 Q. What does the management group at Ocean Tomo do?

03:05:51

13 A. We typically work with companies that have larger
14 intellectual property portfolios, and we work with them to
15 advise them on different ways to better monetize those assets.
16 It could be through avenues of increasing revenues, decreasing
17 costs, just acting as an advisor to better manage those
18 assets.

03:06:10

19 Q. I'm sorry, did you say better manage or better monetize
20 those assets?

21 A. Both.

22 Q. Okay. With respect to monetizing of assets, can you give
23 me some examples of what you're talking about?

03:06:21

24 A. Sure. Asset monetization includes buying or selling
25 intellectual property assets. It includes licensing or

1 potentially litigating, and also raising capital.

2 Q. Anything else?

3 A. Generally, that's it.

4 Q. Let me step back for a moment. Prior to your work at

03:06:39 5 Ocean Tomo, what did you do?

6 A. I worked for a company called AccuVal Associates that was
7 based out of Wisconsin.

8 Q. What did that company do?

9 A. That was an appraisal company, and I led the corporate
03:06:48 10 services valuation practice for the firm.

11 Q. Did that company value IP?

12 A. It did.

13 Q. How, if at all, were the services at AccuVal different
14 from Ocean Tomo?

03:07:00 15 A. I would say that they were similar in some regard, and,
16 for example, a lot of the work that we did was in regard to
17 supporting capital-raising efforts, which we also do at Ocean
18 Tomo, and some of the work was related to more what I would
19 call accounting and tax valuations that we really don't do at
03:07:17 20 Ocean Tomo.

21 Q. What do you mean by capital-raising efforts?

22 A. Typically when, for example, a lender is considering
23 making a loan to a company, it will want an independent
24 advisor to give an opinion on the estimated value of that
03:07:32 25 collateral.

1 Q. Okay. And is that collateral sometimes intellectual
2 property?

3 A. It is.

03:07:39

4 Q. And so in that instance, you would be valuing the
5 intellectual property for purposes of securing the loan; is
6 that right?

7 A. That's correct.

8 Q. Okay. Prior to your work at AccuVal, what did you do?

03:07:54

9 A. I worked at KPMG and KPMG Consulting between 1994 and
10 2005.

11 Q. What type of work did you do for KPMG or KPMG Consulting?

03:08:12

12 A. During my first tenure at KPMG, which was from '94 through
13 2000, I worked in their tax consulting practice. So
14 specifically I worked on matters of property taxation, so
15 dealing with valuation issues, and then from 2000 to 2005,
16 between KPMG Consulting and again KPMG, I worked full-time in
17 their valuation practice.

18 Q. Okay. And did that work for -- the valuation practice
19 involve any intellectual property?

03:08:22

20 A. It did.

21 Q. How so?

03:08:35

22 A. For example, I did a lot of work in the energy industry
23 where we would value contracts, long-term and short-term
24 contracts, where a portion of that value was attributable to
25 intellectual property, things of that nature.

1 Q. Any other way?

2 A. That was primarily it, maybe some customer list valuation,
3 things of that nature, but that was primarily the manner in
4 which I valued it.

03:08:49

5 Q. What, if anything, did you do for work prior to KPMG?

6 A. Prior to KPMG, I worked at Coopers & Lybrand, and I was
7 there from 1991 through 1994. And I worked in their tax
8 consulting practice, also on taxation matters, and we also
9 worked very closely with the valuation team there.

03:09:06

10 Q. And did that also involve intellectual property?

11 A. In some instances, yes.

12 Q. What did you do before Coopers & Lybrand?

13 A. I worked for a company called Comdisco, Incorporated.

14 That was a computer hardware leasing company, and I worked

03:09:21

15 there for four years, two years while in school and then my
16 first two years out of school.

17 Q. And you mentioned school. Did you go to college?

18 A. I did.

19 Q. And graduate?

03:09:27

20 A. Yes.

21 Q. Where did you graduate from?

22 A. From DePaul University here in Chicago.

23 Q. And what did you study there?

24 A. Finance with a minor in accounting.

03:09:35

25 Q. Okay. Let's go back to your work at Ocean Tomo. So you

1 mentioned that you're a managing director in the IP Valuation
2 Practice Group, is that correct?

3 A. That's correct.

03:09:48

4 Q. Can you explain what does the IP Valuation Practice Group
5 do specifically?

03:10:02

6 A. So what we do is our clients will approach us when they
7 are typically in the middle of a negotiation or about to
8 approach a negotiation. They may be looking to buy a set of
9 assets or sell a set of assets. They may be in the middle of
10 a licensing negotiation or litigation matter, and they feel
11 that an independent opinion will help support their
12 decisionmaking process and their diligence process in the
13 negotiation that they're going through.

03:10:17

14 Q. Are there any other reasons that a client might come to
15 Ocean Tomo and specifically to the valuations group?

03:10:35

16 A. It could be a variety of reasons. For example, we do
17 perform valuations sometimes for litigation support purposes.
18 So, for example, I've performed business and equity valuations
19 in the context of shareholder dissent cases where I've had to
20 testify to that work product.

03:10:50

21 Q. Okay. Now within the IP valuations practice at Ocean
22 Tomo, what do the typical fees look like?

23 A. The typical fees, I would say, fall into two tranches, to
24 support capital raising commonly between I would say 15,000
25 and 75,000, and then for the other forms of monetization like

1 I mentioned for buying and selling, licensing and litigating,
2 most commonly between 15,000 and 250,000, and sometimes in
3 excess of that.

03:11:08

4 Q. Okay. With respect to the capital-raising work that you
5 do at the IP valuation group, what type of specific activities
6 would a client receive for payment of that fee?

03:11:25

7 A. What they're concerned about a potential lender is really
8 two things, they're certainly hoping that they make the loan
9 and the client is a strong, going-concern company, so they
10 want to know what that success would look like from monetizing
11 the IP in that manner, but they also want to know if the
12 company ends up in distress and if the collateral has to be
13 claimed and sold, what is an estimate of the value of that
14 collateral on a just pure, you know, cash-today money.

03:11:40

15 Q. Okay. You mentioned the fees in the other area can be
16 much higher, correct?

17 A. They can be.

18 Q. And so why would the fees be higher in other areas?

03:11:53

19 A. I think it goes to just sometimes the types of entities
20 involved and the size of the patent portfolios.

21 Typically, for collateral-based lending, public
22 companies usually aren't going that route. They have
23 different forms of financing available because of the strength
24 of their cash flows.

03:12:07

25 So usually for lending, they're more -- they tend to

1 be more private companies, more cash flow constrained, so the
2 portfolios tend to be smaller and the fees smaller, whereas on
3 the other forms, you can have everything from a small company
4 to a very large Fortune 500 company where the assets are
5 numerous and the fees are larger.

03:12:24

6 Q. What's the typical amount of time that you would spend on
7 an engagement at Ocean Tomo in the IP valuation group?

8 A. Our most common timeframe is about four weeks. We have to
9 typically produce a full draft valuation report within four
10 weeks of getting started. We occasionally get longer, but
11 most common is about four weeks.

03:12:40

12 Q. And I'm sure it varies, but in general how many people
13 might work on that engagement during those four weeks?

14 A. It's typically a team of three, so it's myself and usually
15 two other individuals. Usually we have a Chicago team and a
16 San Francisco team, and we usually have teams of three on each
17 job.

03:12:53

18 Q. And what type of backgrounds do the other individuals have
19 on that team typically?

20 A. It's a mix of technical and business. So, for example, in
21 Chicago, the two individuals I work with have material science
22 engineering backgrounds as well as finance study, and then the
23 team in San Francisco, they have business backgrounds.

03:13:04

24 Q. Now, in your course of your work in the IP Valuations
25 Group at Ocean Tomo, have you ever contributed to reports

03:13:20

1 drafted by the ET or Expert Testimony Group?

2 A. No. The way that I would define it is the first vertical
3 we have at our company is what's called our opinion vertical.
4 We do expert services and valuation.

03:13:35

5 So the Expert Services Group, they really focus on
6 intellectual property infringement cases, where they're
7 looking at damages, and that's more backward looking. And
8 what we do in valuation is really more current and forward
9 looking. And so sometimes we do litigation-ready work. It's

03:13:51

10 just for a different purpose than the separate expert services
11 group.

12 Q. Okay. In other words, you might be doing work in advance
13 of litigation, is that right?

14 A. Yes, or in the context of and during.

03:14:00

15 Q. Okay.

16 A. Yeah.

17 Q. Let's discuss what actually goes into creating one of
18 these valuation reports that you've discussed. What's the
19 first step in the creation of such a report?

03:14:10

20 A. Typically, the first two steps in our process is we always
21 want to start with what is the exact group of intellectual
22 property that you're asking us to appraise as of a given date,
23 given that these can be very fluid portfolios.

03:14:25

24 So what is it exactly, what is the status of those
25 assets, and then we get into the purpose and the scope because

1 people rarely come to us and say randomly I wonder what my
2 assets are worth, right? They have a very specific use for
3 the appraisal so we want to understand assets and use and
4 audience, and that's always the first step in the process.

03:14:41

5 Q. And what do you do next?

6 A. From there, typically we produce an information request,
7 and what our focus is there, once again, confirming the assets
8 that we're valuing, and then we want to know certain
9 information about the assets, such as have they been

03:14:53

10 previously licensed, are they currently in litigation or
11 previously been litigated and what have those outcomes been.

12 We also want to understand have the assets been
13 commercialized; do they have projections for products and
14 services that are supported by these assets, and do they have
15 independent market reports that can help us because usually
16 we're working under a pretty tight timeframe.

03:15:10

17 Q. What types of market reports are you referring to?

18 A. These would be by various third-party providers that will
19 produce very significant and detailed reports in certain
20 technology -- in certain technology segments.

03:15:26

21 Q. Do you know what you typically might pay for such a market
22 report?

23 A. Typically between -- for a high quality report, typically
24 paying for an independent report between 4,000 and 6,000.

03:15:37

25 Q. Okay. And who ends up paying for that report when you're

1 doing one of these valuation reports for an Ocean Tomo client?

2 A. In almost all instances, the client ends up paying. So
3 we'll approach them in advance and let them know of the cost,
4 and then we bill them back at the end of the project. We
03:15:53 5 also -- I'm sorry.

6 Q. Go ahead.

7 A. We also subscribe to -- we have a couple of subscription
8 services where we have a variety of reports available through
9 those services. Sometimes Ocean Tomo will eat that cost, and
03:16:05 10 sometimes it's passed through.

11 THE COURT: Mr. Spence, is the purpose of this
12 testimony to show that the patent rating in this area of Ocean
13 Tomo's work, there's a lot of work that goes in that is --
14 that does not relate to the patent rating score?

03:16:21 15 MR. SPENCE: I'm glad to see that my questioning
16 isn't lost. That's part of it. Also to show they work with a
17 variety of other third parties and routinely purchase reports
18 and they separately bill for those reports.

19 THE COURT: All right. That's not part of the bill
03:16:33 20 that Ocean Tomo sends, but is that bill paid for by the -- by
21 the client directly to the vendor, or is it something where
22 the advance goes to Ocean Tomo and then Ocean Tomo pays it?

23 MR. SPENCE: My understanding is the latter, but you
24 are welcome to question the witness about that. My
03:16:52 25 understanding it's the latter.

1 THE COURT: Well, go ahead, you can ask. The reason
2 I do this in a bench is I'm --

3 MR. SPENCE: Understood.

03:16:59

4 THE COURT: -- there are certain points I get with
5 certain questions. There may be some cross that raises issues
6 you want to respond to on redirect, but I get the point of
7 what you're trying to raise.

8 Go ahead.

9 BY MR. SPENCE:

03:17:07

10 Q. Let me ask you about use of PatentRatings, do you use
11 PatentRatings in any way in the IP Valuations Group?

12 A. We did in the past in certain instances.

13 Q. When did you stop doing so?

14 A. In roughly September of 2015.

03:17:20

15 Q. Why?

16 A. At that time, we made a switch to a tool called
17 Innography.

18 Q. What does Innography do?

03:17:33

19 A. Innography is a similar tool to PatentRatings in that it
20 provided independent patent quality scores and competitive
21 landscape maps.

22 Q. Prior to ceasing the use of PatentRatings within Ocean
23 Tomo, how, if at all, did you use it within the IP Valuations
24 Group?

03:17:47

25 A. What we would -- we would use it really in two ways.

1 First sometimes from a business development perspective, we
2 would let potential clients know about the access that we had
3 to the tool.

03:18:02

4 We were responsible for promoting it and in certain
5 instances told the clients of what the output would look like,
6 showed them sample reports, and let them know that that was a
7 service that was available.

8 Q. What do you mean when you say you were responsible for
9 promoting it?

03:18:13

10 A. Well, it was -- it was a software tool that we had access
11 to through a license, and we certainly wanted our clients to
12 know that that was available, for example, separate from the
13 monetary valuation that we were doing, and if they felt that
14 this could be beneficial to their process, then it was
15 available.

03:18:31

16 Q. Okay. Now, were you involved in the specific billing of
17 engagements to clients while at Ocean Tomo?

18 A. Yes.

19 Q. How so?

03:18:37

20 A. For example, at the completion of a project, we would
21 prepare an invoice or invoices to -- that would match to the
22 engagement letter terms. Then I would send those invoices
23 directly to our accounting department and then send certainly
24 a copy directly to the client.

03:18:56

25 Q. Okay. In any of those engagements where you were

1 personally involved in billing the client, did that involve
2 the use of PatentRatings?

3 A. Yes.

4 Q. In those engagements, how did you bill the client for
5 PatentRatings, if at all?

6 A. I'm sorry.

7 Q. Would you like some water?

8 A. Yeah, would you mind?

9 Sorry, your Honor.

10 THE COURT: No, go ahead. Take your time.

11 (Tendered.)

12 THE WITNESS: Thank you.

13 I'm sorry, could you repeat the question?

14 BY MR. SPENCE:

15 Q. Sure. So I think that my question was in those
16 engagements where PatentRatings was used in your work in IP
17 valuations, how did you bill the client for that PatentRatings
18 work?

19 A. So typically what we would do is it would start with the
20 scoping and engagement letter process, where the client would
21 say, for example, I have this portfolio of patents. Can you
22 give me a fee for including it in the overall scope? What
23 would the price be for producing a report that would have
24 scores and these landscape maps? And then I would go to
25 typically the PatentRatings team or the rate card and price

1 that.

2 Q. And feel free to take a break and grab some water if you
3 need to. We've been up speaking a long time as well, so I
4 feel your pain.

03:20:16

5 A. Thanks.

6 Q. Okay. What was the next step after putting that into the
7 engagement letter?

03:20:27

8 A. In terms of putting it into the engagement letter, what we
9 would do then is once that was finalized, we would certainly
10 work on the project and then deliver the project, and then at
11 the conclusion of the engagement, the PatentRatings work could
12 have been part of a valuation deliverable, for example, as an
13 appendix, or it could have been a stand-alone report.

03:20:45

14 Either way, our goal was to try to price that work
15 separately and then invoice it in that manner. Either we
16 would produce two different invoices, one for the valuation,
17 one for the PatentRatings, or one invoice with the fee split
18 if we could.

03:21:00

19 Q. Okay. And how did you determine the appropriate pricing
20 for the PatentRatings portion of that client deliverable?

03:21:17

21 A. What we would most commonly do is present those assets and
22 the type of output the client was looking for and present that
23 to the PatentRatings team. So I would have conversations, I
24 would send an e-mail and then have a follow-up conversation
25 with the PatentRatings team members that were based

03:21:32

1 predominantly in Irvine, California, and we would walk through
2 what the assets were, what the client was asking for, and then
3 they would produce a fee and a timing request, and then I
4 would relay that to the potential client and put that in the
5 letter.

03:21:47

6 Q. And who were those PatentRatings teams members that you
7 referred to?

8 A. It was a few different individuals. There was Kimberly
9 Na. Last name is spelled N-A. Art Romero, Steve Lee were
10 several of the folks that I spoke to.

03:22:06

11 Q. Other than getting pricing from one of the PatentRatings
12 team members out in California, was there any other way that
13 you determined pricing for use in engagement letters?

14 A. No, because, I mean, we had a rate card that we had access
15 to; but even with the rate card, I still was having
16 conversations with that team that had to produce the
17 deliverable, so --

18 MR. SPENCE: Can we pull up PX 655.

19 BY MR. SPENCE:

03:22:42

20 Q. You should be able to see in front of you PX 655. Do you
21 see that?

22 A. Yes.

23 Q. Do you recognize this document?

24 A. I do.

03:22:48

25 Q. What is it?

1 A. It is essentially a rate card for a PatentRatings output,
2 and we -- this was prepared in 2013.

3 Q. How, if at all, did you use this document in your work at
4 Ocean Tomo?

03:23:03

5 A. It was very common once it was provided to us that this
6 was the starting point in looking at pricing, but still
7 regardless, my goal was to never price it on my own because I
8 wasn't the one doing the work. So I would very commonly look
9 at this rate card, calculate roughly what the price would be,
10 but then I would go to the PatentRatings team for the final
11 scope in pricing.

03:23:23

12 Q. Okay. Is this a true and accurate copy of the rate card
13 that you used while at Ocean Tomo?

14 A. Yes, it is.

03:23:36

15 MR. SPENCE: Your Honor, we move PX 655 in evidence.

16 THE COURT: Any objection?

17 MR. LAYDEN: No objection.

18 THE COURT: PX 655 is admitted.

19 (Plaintiff's Exhibit No. 655 was received in evidence.)

03:23:42

20 BY MR. SPENCE:

21 Q. Other than what you testified about so far, did you use
22 PatentRatings in any other way in your work at Ocean Tomo?

23 A. I mean, not specifically. You know, we -- we produced it
24 when it was helpful and when our clients were requesting that
25 type of output as part of an engagement or as a stand-alone

03:23:59

1 report, and that's how we used it.

2 Q. Did you ever have a client engagement where you provided
3 the deliverable to the client and you also included an
4 Innography score landscape as part of that engagement?

03:24:17

5 A. I think over the last couple of years, there have been
6 instances, for example, specifically I also mentioned I manage
7 the IP management practice, and, for example, in those
8 engagements specifically, we've produced the Innography
9 output.

03:24:30

10 I think in valuation engagements, honestly, much less
11 and less. It's not common for us to include that information
12 anymore necessarily in a report. Sometimes we use it as
13 background information to identify technology clusters,
14 potentially others patenting in the space, things of that
15 nature, but it's not -- not as commonly used in report
16 deliverables.

03:24:46

17 Q. In those deliverables where you did use Innography, how
18 did you bill the client for the inclusion of the Innography
19 product or service in that report?

03:24:59

20 A. With certain clients, we will sometimes include, for
21 example, in the billing a \$500 fee because we pay it on a
22 subscription basis, so sometimes we'll include a \$500 expense
23 charge to help cover the cost of our subscriptions because
24 there's typically multiple databases that we use in client
25 deliverables.

03:25:21

1 Q. Are you familiar with the subscription that Ocean Tomo has
2 to Innography?

3 A. I think I've seen a copy of the contract maybe when it was
4 initially signed, but it's not something that I regularly
5 refer to.

03:25:39

6 Q. Do you have any understanding of the general terms under
7 which Ocean Tomo has access to Innography?

8 A. I'm almost certain we pay a fixed fee for a set number of
9 seats, and those individuals have log-ins, and it's

03:25:53

10 essentially what you would call all-you-can-eat pricing. For
11 a fixed fee for a certain number of seats, those individuals
12 can access the system 24 hours a day and use the information.

13 Q. Okay. And so if my understanding is correct, then Ocean
14 Tomo essentially pays Innography for access to its products
15 and services; is that right?

03:26:09

16 A. Correct.

17 Q. And then Ocean Tomo turns around and sometimes bills its
18 clients for the Innography products and services; is that also
19 right?

03:26:18

20 A. Yes. In certain instances when we've used the tool, for
21 example, if it's in a report, then we invoice for the fee.

22 Q. In your experience working at Ocean Tomo, does that appear
23 as a separate line item, or is it separate from Ocean Tomo's
24 other work on that engagement?

03:26:32

25 A. Typically as part of the expense line, it will say, for

1 example, third-party database access charges, and we'll list
2 sometimes many of the tools that we're using and we used in
3 the engagement so the client is aware of it.

03:26:44

4 Q. Okay. Let me ask you about client development efforts at
5 Ocean Tomo. Are you involved in client development?

6 A. Yes, I am.

7 Q. And have you ever used PatentRatings in any client
8 development while at Ocean Tomo?

03:26:55

9 A. Yes, we have. I mean, sometimes we would, as a starting
10 point in understanding the assets that a company has,
11 certainly we provided -- we'll get a list provided by the
12 company, but normally that's a data dump, an Excel
13 spreadsheet, whereas if we use the PatentRatings tool or even
14 Innography we get the information in a much more organized
15 fashion that we can customize to what we need, and then that
16 helps us understand the fields of use of the technology,
17 really the make-up of the portfolio a little bit better, and
18 that helps us price the engagement.

03:27:12

19 Q. Has the PatentRatings ever enabled you to get a client in
20 to Ocean Tomo that you wouldn't be able to bring to Ocean Tomo
21 otherwise?

03:27:26

22 A. I can't think of an instance where it directly influenced
23 someone's decision to hire Ocean Tomo for a valuation
24 engagement.

03:27:40

25 MR. SPENCE: No further questions, your Honor.

1 EXAMINATION

2 BY THE COURT:

3 Q. Can you explain again the billing process when you use
4 PatentRatings either -- when you did use it, if it was a page
03:27:51 5 or two or three of a report you did or if it was something
6 that a client requested independently as the only aspect of
7 what they requested, what would the bills look like for each
8 of those?

9 A. Sure.

03:28:03 10 So looking at the more recent history, for example,
11 when we were going off of the rate card, what we would do is
12 our goal was in scoping the engagement when we created the
13 engagement letter with the client is that we would have a fee
14 for the valuation, a fee for the ratings work. We would
03:28:22 15 produce two separate reports, and if at all possible, we would
16 also produce two separate invoices.

17 Sometimes a client would say, well, the PatentRatings
18 fee is a small fee, can I just have one invoice? I just want
19 to cut one check. And then on the detail page we would
03:28:36 20 include the fee for the valuation, the fee for the ratings
21 work and a total, and they would pay that. But our goal was
22 to always separate the fee if we could between the valuation
23 fee and the ratings fee.

24 Q. And what about -- so you'd price out what the ratings fee
03:29:00 25 would be if it -- I've seen some exhibits already where the

1 PatentRatings work is a page or two out of a multi-page
2 report.

3 A. Right.

4 Q. What would you do then?

03:29:16

5 A. Typically that would go -- say, for example, if it was one
6 page in a report and it was a list of 20 patents with the
7 scores.

8 Q. Right.

03:29:30

9 A. Then we would have, based upon either the rate card or my
10 conversation directly with the PatentRatings employees, they
11 would tell me here's our standard pricing for producing 20
12 scores, and then that would be the pricing for that report.

03:29:45

13 Q. And that would be broken out in the invoice, either it's
14 two bills or a single bill with the breakout of the patent
15 rating fee and then the rest of the work you did.

03:30:00

16 A. To the best of my recollection, yes. Over the course of
17 seven-plus years I've been there, there may be instances where
18 maybe that didn't occur and it was in the engagement letter
19 but not that way on the invoice. There may have been some
20 inconsistencies, but generally that was always our goal.

21 Q. All right. But do you think there may have been instances
22 where the client gets a single bill, \$20,000, and in it is all
23 your work, all the patent rating work, and anything else that
24 Ocean Tomo was charging?

03:30:15

25 A. It could have been, but then the separation of the fee,

1 for example, may have been in the engagement letter, but the
2 invoice may have said one number.

3 Q. All right. But either way, there would be some
4 memorialization, either an engagement letter or the bill
5 itself which would break out the ratings fee that was being
6 charged to the client, at least vis-a-vis your section's work?

7 A. That's correct. To the best of my recollection, yes.

8 THE COURT: Okay. All right.

9 Any additional questions by plaintiff?

10 MR. SPENCE: None, your Honor.

11 THE COURT: All right. Let's take our afternoon
12 break, about perfect timing, about ten-minute break.

13 MR. SPENCE: Thank you.

14 (Recess taken.)

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1 (Proceedings heard in open court.)

2 THE COURT: Okay. Please be seated. All right.

3 Are we ready for cross-examination?

4 MR. LAYDEN: We are, your Honor.

5 THE COURT: All right. Proceed.

6 CROSS-EXAMINATION

7 BY MR. LAYDEN:

8 Q. Good afternoon, Mr. D'Souza.

9 A. Good afternoon, Mr. Layden.

10 Q. Nice to see you again.

11 A. You too.

12 Q. Now, Mr. D'Souza, when you testified before the break,
13 you gave some testimony regarding Ocean Tomo's practice of
14 sending two invoices to a client in connection with an
15 engagement. Do you recall that testimony?

16 A. Yes, I do.

17 Q. Now, that wasn't always the way it was when you were at
18 Ocean -- during your time at Ocean Tomo; right?

19 A. That was not always the case.

20 Q. In fact, there was a time during your employment at
21 Ocean Tomo when Ocean Tomo would only send one invoice to
22 clients in any given month for a valuation matter; right?

23 A. To the best of my recollection, yes.

24 Q. And that changed right around the -- the -- sometime in
25 late 2011; correct?

1 THE COURT: Late 2000 what?

2 MR. LAYDEN: 2011, your Honor.

3 THE COURT: '11, okay.

4 BY THE WITNESS:

5 A. I don't remember the exact timeframe, but sometime after
6 I started.

7 BY MR. LAYDEN:

8 Q. Do you recall -- well, that change occurred -- let's try
9 to orient this time. That change occurred after Mr. Barney
10 left his employment at Ocean Tomo; right?

11 A. I would be going off of memory, but I believe so.

12 Q. Now, we also heard some testimony this morning, or,
13 sorry, earlier this afternoon, Mr. D'Souza, about a rate card
14 that Mr. Spence showed you. I'm going to go ahead and --
15 here you go, Cory.

16 MR. SPENCE: Thank you.

17 BY MR. LAYDEN:

18 Q. I'm going to come up and hand you a copy of a different
19 document. This is going to be --

20 This is, your Honor, if I haven't given away the
21 one with the number on it. Did I give you the one with the
22 number on it, Cory? I didn't. Sorry. Oh, this is DX-233,
23 your Honor.

24 I'll hand one to you, Mr. D'Souza.

25 THE WITNESS: Okay.

1 MR. LAYDEN: One for your Honor.

2 BY MR. LAYDEN:

3 Q. I'm going to have you take a look at this document,
4 Mr. D'Souza, and tell me if you recognize it -- what it is.
5 I'm going to represent to you that it's a series of e-mails
6 in which you were one of the addressees.

7 A. Okay. I don't remember this exact e-mail, but I
8 understand the context of it.

9 Q. Do you have any reason to doubt that you received this
10 e-mail on or about August 17th of 2012?

11 A. No reason to doubt that.

12 Q. And if you look, there is an attachment to the e-mail.
13 If you look at the very top of the e-mail, it says, "Attached
14 is the policy, or, rather, "rate card" for OTR reports."

15 If you then look at the third page of the exhibit,
16 you will see something called pricing for Ocean Tomo
17 ratings -- Ocean Tomo PatentRatings. Do you see that?

18 A. I do.

19 Q. Do you have any reason to doubt that that is the rate
20 card that was attached to this e-mail?

21 A. I do not.

22 MR. LAYDEN: Your Honor, I move the admission of
23 Defendant's 233.

24 THE COURT: Any objection?

25 MR. SPENCE: No objection to the rate card itself,

1 but an objection to the e-mail, to the extent there is no
2 foundation for -- it's actually a compilation of four
3 different e-mails.

4 THE COURT: I think he is on all of them, though.
5 He is certainly on three of the four, three of the five. And
6 it appears to be an e-mail string which -- and he is on the
7 last of them so it's logical to assume he would be on the
8 earlier one. So objection overruled. DX-233 is admitted.

9 (DX-233 admitted into evidence.)

10 BY MR. LAYDEN:

11 Q. Now, Mr. D'Souza, you will see there that the original
12 e-mail, if you turn to Page 2 of the exhibit, sir, you will
13 see the original e-mail is from Elvir Causevic. Do you see
14 that?

15 A. I do.

16 Q. And who was -- who is -- let's start with who is. Who
17 is Mr. Elvir Causevic?

18 A. Elvir Causevic was a managing director at Ocean Tomo.
19 He was employed as a part-time employee before coming a full
20 time managing director.

21 Q. And in August of 2012, he was a managing director?

22 A. I believe so.

23 Q. You will see that Mr. Causevic, or Dr. Causevic, I
24 suppose, is sending his -- the e-mail initially to Kimberly
25 Na and Arturo Romero. Do you see that?

1 A. I do.

2 Q. Now, you mentioned both their names before on your
3 responses to Mr. Spence's questions, and you describe them
4 several times as PR employees, do you remember saying that,
5 PatentRatings employees? Do you remember saying that?

6 A. Yes.

7 Q. Now, at this point in time, in 2012, Ms. Na is an Ocean
8 Tomo employee; isn't she?

9 A. I don't know that. I mean, there was Ocean Tomo LLC and
10 PatentRatings LLC. I'm not sure who her employment agreement
11 was with or who was paying her. So she could have been
12 technically an employee of either.

13 Q. So you just don't know one way or the other?

14 A. I don't.

15 THE COURT: Well, look right above it, how she
16 identifies herself, at least.

17 BY THE WITNESS:

18 A. Sure, and, per the identification on this e-mail, yes,
19 it's an Ocean Tomo employee.

20 BY MR. LAYDEN:

21 Q. And we don't have -- we don't have a similar e-mail for
22 Mr. Romero, but Mr. Romero at this time was an Ocean Tomo
23 employee; right?

24 A. He worked directly with Ms. Na in that practice. So if
25 you're making an assumption about that, then, yes.

1 Q. Sure. And it's not just, really, just my assumption,
2 I'm just trying to see, do you have any reason to believe
3 that either Ms. Na or Mr. Romero were actually PatentRatings
4 employees at this point in time?

5 A. I don't have a definitive reason to make that statement.

6 Q. I want to direct your attention back to a document that
7 Mr. Spence showed you. This is Plaintiff's Exhibit 655. I
8 don't know if you still have it in front of you, Mr. D'Souza.

9 A. I don't. It was just on the screen before.

10 Q. Oh, it was on the screen. All right.

11 Well, can we pull it up on the screen, John? I'm
12 taxing -- I'm taxing you on that because that's not what I
13 had you working on. All right. This is a document that
14 Mr. -- thanks, John?

15 This is a document Mr. Spence showed you before.
16 Do you remember seeing this as part of your testimony?

17 A. I do.

18 Q. And you identified this as a rate card for Ocean -- for
19 the -- for PatentRatings; is that right?

20 A. That's correct. It's labeled as OT rate card. But,
21 yes, interpretation is it's a PatentRatings rate card.

22 Q. Got it. I just want to direct you -- first of all,
23 let's just orient ourselves in time. So the prior e-mail we
24 looked at, DX-233, that's dated August of 2012; right?

25 A. Yes.

1 Q. And that's a year and a half after Mr. Barney left;
2 right? I'll represent to you Mr. Barney resigned in
3 employment in February of 2011.

4 A. Yes.

5 Q. Does that sound right?

6 A. Yes.

7 Q. And then if we look at this document, we look down at
8 the bottom of PX-655, and the date is June 17, 2013; right?

9 A. That's correct.

10 Q. Now, and I'll note that there is obviously an effective
11 date of June 14th. There is a few different dates on this
12 document. Let's look there on the first page. There are
13 space for four different approvals here. The first approval,
14 the name is Joel Lutzker. Who is Mr. Lutzker?

15 A. Mr. Lutzker is general counsel and patent attorney for
16 Ocean Tomo LLC.

17 Q. And he is the one who signed this document, PX-655,
18 approving the rate card for PatentRatings -- I'm sorry, for
19 the OT rate card; right?

20 A. I see a signature there below his printed name. I'll
21 assume that it's his.

22 Q. You have no reason to doubt that's Mr. Lutzker's
23 signature; right?

24 A. No.

25 Q. So just to be clear, there was a change between -- and

1 now I want to get back to the invoicing practice. So when
2 you started at Ocean Tomo in the valuation practice, the
3 practice was to send out one invoice to the customer in a
4 month; right? Per month?

5 A. To the best of my recollection, yes.

6 Q. Okay. And then at some point after Mr. Barney left, the
7 practice became to send out two invoices to customer in a
8 month. And you talked about that with Mr. Spence; right?

9 A. That's right.

10 Q. Now, you never had a customer negotiate with you the
11 pricing of the Ocean -- of the PatentRatings work that was
12 being done; right?

13 A. I don't recall for certain if a client ever negotiated
14 the price. It's certainly possible. I would say it wasn't
15 common, but I can't say definitively that that never
16 happened.

17 Q. Well, do you recall giving a deposition in this matter,
18 Mr. D'Souza?

19 A. Uh-huh.

20 Q. Do you recall that in that deposition you were under
21 oath?

22 A. Yes.

23 MR. LAYDEN: Your Honor, do you want a copy of the
24 transcript?

25 THE COURT: No.

1 BY MR. LAYDEN:

2 Q. Mr. D'Souza, I asked you the following question in that
3 deposition, and I'm going to ask you if you recall -- you
4 recall your response.

5 And, Cory, this is on Page 98, Line 20.

6 Question: "Do you have any recollection of a
7 client ever negotiating the amount that was an engagement
8 letter -- that was in an engagement letter for the
9 PatentRatings work?"

10 Answer: "No."

11 Mr. D'Souza, I'm going to step up and hand you
12 another document.

13 Cory, this is DX-240.

14 There you go.

15 A. Thanks.

16 MR. LAYDEN: Your Honor, this is DX-240.

17 THE COURT: All right.

18 MR. LAYDEN: We will get them labeled in advance
19 tomorrow, so.

20 BY MR. LAYDEN:

21 Q. Now, take a look at this, Mr. D'Souza, and tell me if
22 you recognize Defendant's Exhibit 240.

23 A. Yes, I do.

24 Q. What is it?

25 A. It's an e-mail from me to -- to a gentleman at -- a

1 company by the name of OpinionLab on September the 5th of
2 2012.

3 Q. And this is an e-mail you sent on or about that date to
4 the folks at OpinionLab?

5 A. That's correct.

6 Q. Okay. And you will see that there is a -- in the line
7 of the e-mail that references attachment, there is a
8 PowerPoint presentation which is referenced there. Do you
9 see that?

10 A. I do.

11 Q. And just take a quick look at the attachment. Do you
12 have any reason to doubt that this document that is attached
13 to Defendant's Exhibit 240 is, in fact, the attachment you
14 sent along with the folks at OpinionLab on this day?

15 A. No reason to doubt it.

16 MR. LAYDEN: Your Honor, I move the admission of
17 Defendant's Exhibit 240.

18 THE COURT: Any objection?

19 MR. SPENCE: No objection, your Honor.

20 THE COURT: It's admitted without objection.

21 (Defendant's Exhibit 240 admitted into evidence.)

22 BY MR. LAYDEN:

23 Q. Now, Mr. Spence also asked you some questions about your
24 testimony -- asked you some questions about Innography and
25 how Ocean Tomo bills for the Innography services -- strike

1 that. Asked you some questions about how Ocean Tomo pays for
2 the Innography services. Do you remember that testimony in
3 that regard?

4 A. I do.

5 Q. And you talked about how Ocean Tomo has an arrangement
6 with Innography to basically buy seat licenses; right?

7 A. Correct.

8 Q. Now, you were aware, or you are aware, that Ocean Tomo
9 has a license agreement with PatentRatings; correct?

10 A. I'm aware of that, yes.

11 Q. Okay. And you're aware that that license agreement --
12 you're not contending here that that license agreement
13 somehow applies provides for seat licenses; are you?

14 A. I'm not aware of that specifically in the agreement.

15 Q. And I'm not asking you to interpret the agreement. I
16 know you're not a lawyer. But you're aware that, under the
17 PatentRatings Ocean Tomo license agreement, there are royalty
18 obligations; right?

19 A. Generally, yes.

20 Q. Mr. D'Souza, I'm going to hand you what's been marked as
21 349A.

22 Your Honor, a copy for you. That's DX-349A.

23 Mr. D'Souza, I'm going to represent to you that
24 DX-349A is excerpts taken from the Ocean Tomo LLC website.
25 We have actually marked as an exhibit the entire website, but

1 that would be many, many pages. So what I've done to not
2 kill too many trees is just take a few pages out of it.

3 And I'm going to specifically ask you about pieces
4 of this website that relate to the valuation practice which
5 is, in fact, your practice at Ocean Tomo; right?

6 A. That's correct.

7 Q. So I assume you've been to the Ocean Tomo website;
8 correct?

9 A. I have.

10 Q. I would hope so. If you could take a look at 349A and
11 tell me whether you have any reason to believe that this
12 document does not come -- does not come from the Ocean Tomo
13 website. And to be clear, for the record, this was
14 downloaded on January 2nd, 2015. I'll represent that to you.

15 So if you could just take a moment, Mr. D'Souza,
16 and tell me if you have any reason to believe that these
17 excerpts that I have put in front of you don't come from the
18 Ocean Tomo website.

19 A. I believe that it does.

20 Q. Okay.

21 MR. LAYDEN: Your Honor, I would move the admission
22 of DX-349A.

23 THE COURT: Any objection?

24 MR. SPENCE: No objection, your Honor.

25 THE COURT: All right. It's admitted.

1 (DX-349A admitted into evidence.)

2 BY MR. LAYDEN:

3 Q. Mr. D'Souza, I just want to direct your attention --
4 let's start with the first page of the document, which is the
5 "Welcome to Ocean Tomo" page. And if you look there under
6 the "Welcome to Ocean Tomo" heading, go down to the third
7 paragraph. And it talks about how Ocean Tomo is
8 headquartered in Chicago and has offices in Greenwich,
9 Houston, Irvine, San Francisco and Seattle. It talks about
10 the subsidiaries of Ocean Tomo.

11 It then says, and I want to direct you to this,
12 "Ocean Tomo is the founder of the intellectual property
13 Exchange IPXI, Inc." -- Exchange International, sorry --
14 "IPXI Inc., creator of the live public open cry auction
15 marketplace for intellectual property, as well as the
16 exclusive source for Ocean Tomo ratings." Do you see that?

17 A. I do see that.

18 Q. And Ocean Tomo ratings is the same system as
19 PatentRatings; right?

20 A. That's my understanding.

21 Q. All right. Let's turn to the next page of this excerpt,
22 Mr. D'Souza. And this is now -- now we're diving into the
23 website and we're now at the valuation section of the
24 website. And what I want to show you there is, if you look
25 down to the middle of that page, it says, "valuation by asset

1 class." Do you see that?

2 A. Yes.

3 Q. And Mr. Spence asked you some questions about the kind
4 of IP that you value, and you indicated that, you know, one
5 of the primary things that you do is value patents; correct?

6 A. That's right.

7 Q. You will see there under patents it reads, "Our
8 expertise in understanding the value of patents and patent
9 applications, both domestic and international, is unsurpassed
10 in the industry, due to our ability to leverage the knowledge
11 of every facet of our service model, including IP damages
12 analysis and litigation and our proprietary PatentRatings
13 system." Do you see that?

14 A. I do.

15 Q. Now let's turn to the next page of this excerpt. And
16 this is some project examples from the Ocean Tomo website.
17 And you will look down there, and there is -- I want to
18 direct you to the very bottom of the page, where it says,
19 "licensing strategy." Do you see that?

20 A. Yes.

21 Q. It says, "A major financial services company began a
22 program to regularly review its IP portfolio to establish
23 modernization strategies to generate annuity revenue. Ocean
24 Tomo first assessed the quality of the specified patents, as
25 well as relevant competitors in terms of comparability of

1 their IP portfolios, using its proprietary PatentRatings
2 system. They utilized the output of these reports to make a
3 determination as to which patents have the strongest
4 licensing potential and engage our valuation practice to
5 complete current fair market value assessments." Do you see
6 that?

7 A. I do.

8 Q. Let's go to the next page. And this is, again, now
9 we're looking at a valuation page from the Ocean Tomo
10 website. And you will see there that, you will look down
11 under, "Intellectual Property and Identifiable Intangible
12 Assets," the second section down is entitled, "Patents." Do
13 you see that?

14 A. Yes.

15 Q. And it reads: "Our expertise in understanding the value
16 of patent claims is unsurpassed in the industry due to our
17 ability to leverage the knowledge of every facet of our
18 service model, including IP damages analysis and litigation
19 and our proprietary Ocean Tomo rating system."

20 Do you see that?

21 A. Yes.

22 Q. Now, I want to turn to the next page. It's the last
23 page of this exhibit. This is the media room. And this is a
24 copy of a press release on the Ocean Tomo website, or at
25 least an announcement on the Ocean Tomo website, which says,

1 "Ocean Tomo announces expanded valuation practice group."

2 And this is dated May 6th of 2010. Do you see that?

3 A. Yep.

4 Q. And this talks about you; doesn't it?

5 A. Yes, in part it does.

6 Q. It says, in the third paragraph there, "New managing
7 director, Roy D'Souza, leads the valuation practice group."

8 Then goes on to talk about you. And then it says -- here is
9 a quote from you. And I am now in the fourth paragraph of
10 this page. And it says, "I am excited to be in this
11 position," D'Souza proclaims. "The Ocean Tomo's unique
12 position as a market maker and its proprietary PatentRatings
13 system allow for more efficient analysis grounded in real
14 world experience. Other firms will need to re-invent
15 themselves to compete." Do you see that?

16 A. Yes, I do.

17 MR. LAYDEN: Nothing further.

18 THE COURT: All right. Any redirect?

19 MR. SPENCE: Short redirect, your Honor.

20 REDIRECT EXAMINATION

21 BY MR. SPENCE:

22 Q. Mr. D'Souza, prior to there being a rate card at Ocean
23 Tomo for pricing of patent ratings, how, if at all, did you
24 price patent ratings?

25 A. Those typically would have been telephone conversations

1 directly with the PatentRatings team.

2 Q. Who was in the PatentRatings team?

3 A. Individuals such as Kimberly Na, Arturo Romero, Steve
4 Lee.

5 Q. To whom do those individuals report?

6 A. Jonathan Barney.

7 MR. SPENCE: No further questions, your Honor.

8 THE COURT: All right. Anything else?

9 MR. LAYDEN: Just a quick clarifying one, your
10 Honor. You will probably guess what it is.

11 RECROSS EXAMINATION

12 BY MR. LAYDEN:

13 Q. Now, Mr. D'Souza, you're not testifying that prior --
14 after Mr. Barney's departure those folks reported to
15 Mr. Barney; right?

16 A. That's not what I am testifying to.

17 Q. You're talking about the period of time before
18 Mr. Barney departed Ocean Tomo as an employee; correct?

19 A. That's correct.

20 Q. And we're talking about Ms. Na and Mr. Romero; right?

21 A. Yes.

22 Q. And they were located in Ocean Tomo's, Irvine,
23 California office; right?

24 A. That's right.

25 Q. And far as you know, they were Ocean Tomo employees that

1 entire time; right?

2 A. As far as I know. I don't know what their employment
3 contract said, but I'm assuming so.

4 Q. I don't think there is any dispute all those folks were
5 W-2 employees of Ocean Tomo. But I suppose if there is, we
6 can deal with that later, but, I have no further questions.
7 Thank you.

8 THE COURT: I have one question.

9 EXAMINATION

10 BY THE COURT:

11 Q. Before Mr. Barney left, you said that there were -- one
12 invoice was sent out to customers, typically?

13 A. To the best of my recollection, your Honor, that's
14 correct.

15 Q. Was a breakdown of the patent rating charge either in
16 the engagement letter or the detail of the bill, or was it
17 just a single number?

18 A. The -- to the best of my recollection, the invoice was a
19 single number. There may have been, for example, an e-mail
20 exchange with the client where we separated the fee, or it
21 may have been stated in the engagement letter, and that may
22 have been the practice. I don't -- I don't recall
23 definitively.

24 Q. All right. I guess Ocean Tomo could do what law firms
25 could not do back then, was just send just the bill with one

1 number on it. But that -- that was not the practice for law
2 firms.

3 So it was not broken out, as far as you know, in
4 the bill itself? In other words, you just sent a bill for X
5 dollars. Maybe you had internal accounting numbers to -- you
6 certainly had that, internal accounting numbers, to come up
7 with the bill, but you didn't break it out by person, by
8 hour, by expense, to a client?

9 A. That would -- well, you --

10 Q. I mean --

11 A. So, for example, there were some engagements where we
12 would show the hourly rate detail, for example, in the
13 valuation work. But the ratings work was always priced on a
14 fixed-fee basis.

15 Q. Okay?

16 A. So that could have been -- there could have been hours
17 detailed, but that would have been for the valuation.

18 THE COURT: I see. All right. Thank you. Any
19 additional questions by the parties?

20 MR. SPENCE: No questions, your Honor.

21 MR. LAYDEN: No, your Honor.

22 THE COURT: All right. Sir, you're excused. Thank
23 you.

24 THE WITNESS: Thank you.

25 (Witness excused.)

1 THE COURT: Please call your next witness.

2 MR. SPENCE: Your Honor, we actually have another
3 witness, but he is a former employee and not available. I
4 didn't think we would get this far today.

5 THE COURT: Pardon me?

6 MR. SPENCE: We didn't anticipate getting this far
7 today.

8 THE COURT: All right. Well, it's a happy
9 occurrence that we get through more quickly than thought.

10 All right. Well, then, we will break for today.
11 And why don't we go off the record, talk scheduling a little
12 bit.

13 (Trial adjourned at 4:21 PM.)
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C E R T I F I C A T E

We, KATHLEEN M. FENNELL and SANDRA M. MULLIN, certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter.

/s/ KATHLEEN M. FENNELL
KATHLEEN M. FENNELL, CSR, RMR, FCRR
Official Court Reporter

August 17, 2017

/s/ SANDRA M. MULLIN
SANDRA M. MULLIN, CSR, RMR, FCRR

August 17, 2017